TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 83.

RANSOM F. HUMISTON, TO THE USE OF WILLIAM P. HORTON, PLAINTIFF IN ERROR,

vs.

JAMES P. WOOD AND JOSEPH WOOD, COPARTNERS UNDER THE FIRM NAME OF JAMES P. WOOD AND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 10, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 83.

RANSOM F. HUMISTON, TO THE USE OF WILLIAM P. HORTON, PLAINTIFF IN ERROR,

vs.

JAMES P. WOOD AND JOSEPH WOOD, COPARTNERS UNDER THE FIRM NAME OF JAMES P. WOOD AND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Writ of summons and return	5	2
Narr	7	3
Plea	19	8
Replication	22	9
Additional pleas	23	10
Replication	31	12
Calling of jury	32	13
Verdict	33	13
Motion for new trial and reasons	34	13
Argued on motion for new trial	35	13
Motion for new trial denied	35	13
Judgment	35	13
Bill of exceptions	36	13
Plaintiff's evidence	37	14
Deposition of Ransom F. Humiston	37	14
William H. Myers	57	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 29, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 83.

RANSOM F. HUMISTON, TO THE USE OF WILLIAM P. HORTON, PLAINTIFF IN ERROR,

vs.

JAMES P. WOOD AND JOSEPH WOOD, COPARTNERS UNDER THE FIRM NAME OF JAMES P. WOOD AND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Writ of summons and return	5	2
Narr	7	3
Plea	19	8
Replication	22	9
Additional pleas	23	10
Replication	31	12
Calling of jury	32	13
Verdict	33	13
Motion for new trial and reasons	34	13
Argued on motion for new trial	35	13
Motion for new trial denied	35	13
Judgment	35	13
Bill of exceptions	36	13
Plaintiff's evidence	37	14
Deposition of Ransom F. Humiston	37	14
William H. Myers	57	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 29, 1887.

	Original.	Print.
Articles of agreement for formation of corporation	61	20
Agreement of July 31, 1879	65	22
Assignment of Humiston to Wood as trustee	67	22
Wood's directions	69	22
Plaintiff's circular	70	24
Wood's circular	74	29
Letter of Feb'y 12, 1880, to J. C. Wood	75	30
Feb'y 13, 1880, to plaintiffs	79	31
Feb'y 18, 1880, to defendant	80	31
Humiston's patent	81	31
Bond sur writ of error	88	38
Clerk's certificate	90	40

1 UNITED STATES, } *sct:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horton, a citizen of the State of Ohio, plaintiff, and James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, defendants, in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said Ransom F. Humiston, to the use of William P. Horton, as in *their* complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 23rd day of April, A. D. one thousand eight hundred and eighty-four, and in the one hundred and eighth year of the Independence of the said United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horton, a citizen of the State of Ohio, — plaintiff and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of

error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this twenty-third day of April, in the year of our Lord one thousand eight hundred and eighty-four.

WM. BUTLER, *Judge.*

I hereby accept service of within citation.
April 23, 1884.

WAYNE MACVEAGH.

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey, to the use of WILLIAM P. HORTER, a citizen of the State of Ohio,

vs.

JAMES P. WOOD and JOSEPH WOOD, Copartners under the Firm of James P. Wood and Company, citizens of the State of Pennsylvania.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1880. No. 54.

It is thus contained:

Be it remembered that on the 31st day of December, A. D. 1880, Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horter, a citizen of the State of Ohio, by
4 his attorneys, Francis E. Brewster and F. Carroll Brewster, Esquires, come into court here and sue forth therefrom a writ of summons against James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, which, with the endorsement and return thereto, is in the words and figures following, to wit:

5 UNITED STATES,
Eastern District of Pennsylvania, } *sct:*

[SEAL.] The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you that you summon James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, late of your district, if they may be found therein, so that they be and appear before the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of January next, to answer to Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horter, a citizen of the State of Ohio, in a plea of trespass on the case; and have you then there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirty-first day of December, A. D. 1880, and in the 105th year of the Independence of the United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

6 No. 54. Circuit court. Oct. session, 188–. Humiston, to use, &c., *vs.* Wood *et al.* Summons. Case returnable on the first Monday of January next. Francis E. Brewster, F. Carroll Brewster, attorneys for plaintiff. Returned & filed January 3, 1881.

Dec. 31, 1880, at Phila., in my district, served the within writ on James P. Wood, by leaving a true and attested copy thereof at his dwelling-house with an adult member of his family; also same day served Joseph Wood by reading the same in his hearing and leaving a true and attested copy thereof with him; so answers—

JAMES N. KERNS,
U. S Marshal,
Pr. C. McCORMICK, *Deputy.*

7 And afterwards, to wit, on the 22d day of January, A. D. 1881, the plaintiff, by his attorneys, comes into court here and files his narr., which, being read, is as follows, to wit:

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

In the Circuit Court of the United States for the Third Circuit, Eastern District of Pennsylvania, of October Sessions, A. D. 1880. No. 54.

James P. Wood and Joseph Wood, copartners trading under the firm name of James P. Wood and Company, citizens of the State of Pennsylvania, were summoned to answer Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horton, a citizen of the State of Ohio, of a plea of trespass on the case; and thereupon the said plaintiff, by Francis E. Brewster and F. Carroll Brewster, his attorneys, complains:

For that whereas before and at the time of the making by the defendants of the promises hereinafter mentioned the plaintiff,
8 the said Ransom F. Humiston, was the patentee of an apparatus known as "Humiston's atmospheric hydrocarbon apparatus," for generating light and heat, under letters patent bearing date June twenty-fourth, anno Domini one thousand eight hundred and seventy-nine (1879), and numbered two hundred and sixteen thousand eight hundred and fifty-three (216,853);

And whereas the said plaintiff before the making of the promises and undertakings by the defendants hereinafter mentioned had exhibited the said apparatus to the said defendants; and whereas the said defendants were anxious to purchase from the said plaintiff an

assignment of the said patent for the States of Pennsylvania and New Jersey;

And whereas the defendants heretofore, to wit, on the twenty-sixth day of July, A. D. eighteen hundred and seventy-nine (1879), at the eastern district aforesaid, promised and agrees to and with the said plaintiff as follows:

That if the said plaintiff would transfer and assign the sole right of the States of Pennsylvania and New Jersey in the said patent that they, the said defendants, would pay to the said plaintiff
9 therefor the sum of twenty-five thousand dollars lawful money. And the said plaintiff then and there accepted the said offer and promise of the said defendants, and then and there agreed to and with the said defendants that, in consideration of the said sum of twenty-five thousand dollars, lawful money as aforesaid, he, the said plaintiff, would assign and transfer the sole right in the said patent for the States of Pennsylvania and New Jersey. And the said defendants, at first desiring that the assignments and transfer of the said patent right in the States aforesaid should be made to them in their own names, but subsequently desiring the assignment to be made to a corporation, the said defendants thereupon caused to be prepared an assignment of said patent right to Joseph Wood, one of the said defendants, as trustees of the said defendants and of one William H. Myers and of one B. M. Feltwell and of the said plaintiff, and the said defendants requested the plaintiff to be one of five persons, being the number necessary to create a corporation, the said defendants then preferring that the patent right aforesaid should be held by a corporation to be formed under the pro-
10 visions of an act of Assembly of the Commonwealth of Pennsylvania (approved April twenty-ninth, anno Domini eighteeen hundred and seventy-four, 1874), under the name and style of the American Light and Heat Company of Philadelphia, Pennsylvania, the purpose of which was to be the manufacture and sale of the plaintiff's said apparatus and for the manufacture and sale of fixtures for the same and for the preparation and sale of oil suitable for the use of the said apparatus; and thereupon the said defendants, to wit, at the eastern district aforesaid, in order to carry out their last design, caused to be prepared an agreement whereby the said defendants and one B. M. Feltwell and one William H. Myers and the plaintiff were to form a corporation under the name and title above set forth and for the purpose above mentioned, and whereby the said plaintiff was to transfer and assign the sole right in the said patent for the States of Pennsylvania and New Jersey for the consideration of twenty-five thousand dollars, lawful money as aforesaid, and an article of association between the said defendants and the said B. M. Feltwell and the said William H. Myers and
11 the said plaintiff, whereby in pursuance of said above-mentioned act of Assembly they were to associate themselves together as a body politic and corporate, under the name and title above set forth and for the purposes above mentioned; and the said defendants requested the said plaintiff to execute the same, which the said plaintiff then and there did, to wit, at the eastern district aforesaid

And the said plaintiff in fact saith that, under and by virtue of the said first agreement theretofore made and entered into by and between him, the said plaintiff and the said defendants afterwards, to wit, on the thirtieth day of September, anno Domini eighteen hundred and seventy-nine (1879), at the eastern district aforesaid, he, the said plaintiff, at the special instance and request of the said defendants, executed to Joseph Wood, one of the said defendants, as trustee for said association, an assignment of the said sole right of said patent for the States of Pennsylvania and New Jersey as aforesaid, which said assignment the said defendants then and there, to wit, at the eastern district aforesaid, accepted and then and
12 there undertook, promised, and agreed to pay the said plaintiff in consideration therefor the said sum of twenty-five thousand dollars, lawful money as aforesaid.

And whereas, after the execution of the said agreement, articles of association and assignment by the said plaintiff, at the special instance and request of said defendants, they, the said defendants, abandoned the application for the incorporation of said corporation for the purposes above set forth, and declared that they held the sole right of the said patent for the States aforesaid as originally agreed upon by and between them and the said plaintiff; and although the said plaintiff hath always from the time of said agreement hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled; and although the said plaintiff did transfer and assign, as requested by the said defendants, the sole right of the States of Pennsylvania and New Jersey in the said patent, yet the said plaintiff in fact saith that the said defendants, although requested, did not nor would com-
13 ply *comply* with their said agreement, and did not nor would, although often requested, pay or cause to be paid the said sum of twenty-five thousand dollars, lawful money as aforesaid, but have wholly neglected and refused so to do, and therein failed and made default contrary to their promise and undertaking aforesaid, to wit, at the eastern district aforesaid.

Second count. And also for that whereas heretofore, to wit, on the thirtieth day of September, anno Domini eighteen hundred and seventy-nine (1879), to wit, at the eastern district aforesaid, the said defendants promised and agreed to and with the said plaintiff to pay said plaintiff the further sum of twenty-five thousand dollars, like lawful money, in equal monthly instalments of five thousand dollars each month until all of said twenty-five thousand dollars should be paid, if he, the said plaintiff, would execute an assignment and transfer, in such form as said defendants should request, of the sole right for the States of Pennsylvania and New Jersey of a certain other improvement in apparatus for burning hydrocarbons, known as "Humiston's atmospheric hydro-carbon ap-
14 paratus for generating light and heat," secured by letters patent bearing date the twenty-fourth day of June, anno Domini one thousand eight hundred and seventy-nine (1879), and numbered two hundred and sixteen thousand eight hundred and fifty-three (216,853).

assignment of the said patent for the States of Pennsylvania and New Jersey;

And whereas the defendants heretofore, to wit, on the twenty-sixth day of July, A. D. eighteen hundred and seventy-nine (1879), at the eastern district aforesaid, promised and agrees to and with the said plaintiff as follows:

That if the said plaintiff would transfer and assign the sole right of the States of Pennsylvania and New Jersey in the said patent that they, the said defendants, would pay to the said plaintiff
9 therefor the sum of twenty-five thousand dollars lawful money. And the said plaintiff then and there accepted the said offer and promise of the said defendants, and then and there agreed to and with the said defendants that, in consideration of the said sum of twenty-five thousand dollars, lawful money as aforesaid, he, the said plaintiff, would assign and transfer the sole right in the said patent for the States of Pennsylvania and New Jersey. And the said defendants, at first desiring that the assignments and transfer of the said patent right in the States aforesaid should be made to them in their own names, but subsequently desiring the assignment to be made to a corporation, the said defendants thereupon caused to be prepared an assignment of said patent right to Joseph Wood, one of the said defendants, as trustees of the said defendants and of one William H. Myers and of one B. M. Feltwell and of the said plaintiff, and the said defendants requested the plaintiff to be one of five persons, being the number necessary to create a corporation, the said defendants then preferring that the patent right aforesaid should be held by a corporation to be formed under the pro-
10 visions of an act of Assembly of the Commonwealth of Pennsylvania (approved April twenty-ninth, anno Domini eighteeen hundred and seventy-four, 1874), under the name and style of the American Light and Heat Company of Philadelphia, Pennsylvania, the purpose of which was to be the manufacture and sale of the plaintiff's said apparatus and for the manufacture and sale of fixtures for the same and for the preparation and sale of oil suitable for the use of the said apparatus; and thereupon the said defendants, to wit, at the eastern district aforesaid, in order to carry out their last design, caused to be prepared an agreement whereby the said defendants and one B. M. Feltwell and one William H. Myers and the plaintiff were to form a corporation under the name and title above set forth and for the purpose above mentioned, and whereby the said plaintiff was to transfer and assign the sole right in the said patent for the States of Pennsylvania and New Jersey for the consideration of twenty-five thousand dollars, lawful money as aforesaid, and an article of association between the said defendants and the said B. M. Feltwell and the said William H. Myers and
11 the said plaintiff, whereby in pursuance of said above-mentioned act of Assembly they were to associate themselves together as a body politic and corporate, under the name and title above set forth and for the purposes above mentioned; and the said defendants requested the said plaintiff to execute the same, which the said plaintiff then and there did, to wit, at the eastern district aforesaid

And the said plaintiff in fact saith that, under and by virtue of the said first agreement theretofore made and entered into by and between him, the said plaintiff and the said defendants afterwards, to wit, on the thirtieth day of September, anno Domini eighteen hundred and seventy-nine (1879), at the eastern district aforesaid, he, the said plaintiff, at the special instance and request of the said defendants, executed to Joseph Wood, one of the said defendants, as trustee for said association, an assignment of the said sole right of said patent for the States of Pennsylvania and New Jersey as aforesaid, which said assignment the said defendants then and there, to wit, at the eastern district aforesaid, accepted and then and
12 there undertook, promised, and agreed to pay the said plaintiff in consideration therefor the said sum of twenty-five thousand dollars, lawful money as aforesaid.

And whereas, after the execution of the said agreement, articles of association and assignment by the said plaintiff, at the special instance and request of said defendants, they, the said defendants, abandoned the application for the incorporation of said corporation for the purposes above set forth, and declared that they held the sole right of the said patent for the States aforesaid as originally agreed upon by and between them and the said plaintiff; and although the said plaintiff hath always from the time of said agreement hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled; and although the said plaintiff did transfer and assign, as requested by the said defendants, the sole right of the States of Pennsylvania and New Jersey in the said patent, yet the said plaintiff in fact saith that the said defendants, although requested, did not nor would com-
13 ply *comply* with their said agreement, and did not nor would, although often requested, pay or cause to be paid the said sum of twenty-five thousand dollars, lawful money as aforesaid, but have wholly neglected and refused so to do, and therein failed and made default contrary to their promise and undertaking aforesaid, to wit, at the eastern district aforesaid.

Second count. And also for that whereas heretofore, to wit, on the thirtieth day of September, anno Domini eighteen hundred and seventy-nine (1879), to wit, at the eastern district aforesaid, the said defendants promised and agreed to and with the said plaintiff to pay said plaintiff the further sum of twenty-five thousand dollars, like lawful money, in equal monthly instalments of five thousand dollars each month until all of said twenty-five thousand dollars should be paid, if he, the said plaintiff, would execute an assignment and transfer, in such form as said defendants should request, of the sole right for the States of Pennsylvania and New Jersey of a certain other improvement in apparatus for burning hydrocarbons, known as "Humiston's atmospheric hydro-carbon ap-
14 paratus for generating light and heat," secured by letters patent bearing date the twenty-fourth day of June, anno Domini one thousand eight hundred and seventy-nine (1879), and numbered two hundred and sixteen thousand eight hundred and fifty-three (216,853).

And the said plaintiff in fact saith that, relying upon the said last-mentioned agreement entered into by and between the said plaintiff and the said defendants, and in pursuance thereof, he, the said plaintiff, afterwards, to wit, on the day and year last aforesaid, to wit, at the eastern district aforesaid, did make and execute an assignment and transfer, in the form said defendants requested, of the sole rights for the States of Pennsylvania and New Jersey of the said last-mentioned improvement in apparatus for burning hydrocarbons, known as "Humiston's atmospheric hydrocarbon apparatus for generating light and heat," secured by letters patent as last aforesaid, and delivered the same to said defendants, and the said defendants then and there, to wit, on the day and year last aforesaid, at the eastern district aforesaid, accepted the same; and although the said plaintiff hath well and truly performed and fulfilled the said agreement in all things therein
15 contained on his part and behalf to be performed and fulfilled, yet the said plaintiff in fact saith that the said defendants did not nor would pay the said last-mentioned sum of twenty-five thousand dollars in equal monthly instalments of five thousand dollars each month, although often thereunto, before the commencement of this suit by the said plaintiff, requested, but wholly neglected and refused so to do, and therein failed and made default contrary to their promise and undertaking last aforesaid.

Third count. And also for that whereas heretofore, to wit, on the thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty (1880), at the eastern district aforesaid, the said defendants were justly and truly indebted to the said plaintiff in the sum of twenty-five thousand dollars, being the price agreed by the said defendants to and with said plaintiff to be paid by said defendants to said plaintiff for a certain assignment theretofore executed by plaintiff, at the special instance and request of said defendants, of the sole right for the States of Pennsylvania
16 and New Jersey of a certain patent for burning hydrocarbons, said patent bearing date the twenty-fourth day of June, anno Domini eighteen hundred and seventy-nine; and, being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, promised and agreed to and with the said plaintiff to pay him the said sum of twenty-five thousand dollars on demand.

Yet the said defendants, although afterwards thereto, before the commencement of this suit by said plaintiff, frequently requested, have not paid said last-mentioned sum of money or any part thereof to said plaintiff.

And also for that whereas the said defendants heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and eighty, to wit, at the county aforesaid, were indebted to the said plaintiff in the sum of thirty thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandise by the said plaintiffs to the said defendants before that time sold and delivered at their special instance and request.

And also in the further sum of thirty thousand dollars for goods then and there bargained and sold by the plaintiff to the defendants at their like special instance and request.

17 And also in the further sum of thirty thousand dollars, like money, for the work, labor, care, and diligence of the said plaintiff before that time done, performed, and bestowed in and about the business of the said defendants at their like special instance and request.

And also in the further sum of thirty thousand dollars, like money, for so much money by the said plaintiff before that time lent and advanced and paid, laid out, and expended to and for the use of the said defendants and at their like instance and request.

And also in the further sum of thirty thousand dollars, like money, for other money by the said defendants before that time had and received to and for the use of the said plaintiff.

And also in the further sum of thirty thousand dollars, like money, for so much money then and there found to be due and owing from the said defendants to the said plaintiff, and in arrear and unpaid, upon an account then and there stated between them.

And also in the further sum of thirty thousand dollars for money due to the plaintiff by the defendants upon promissory notes made by the defendant and held by the plaintiff, and which are due and unpaid.

And also in the further sum of thirty thousand dollars for money due to the plaintiff by the defendants upon their endorsements of certain promissory notes which are due and have been duly preented for payment and of which payment has been refused and the defendants have been duly notified thereof.

And also in the further sum of thirty thousand dollars for interest then and there due and payable for the forbearance by the

18 plaintiff, at the defendants' request, for moneys before then due and owing from the defendants to the plaintiff.

And, being so indebted, the said defendant-, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiff to pay to him the said several sums of money above mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants, not regarding the said several promises and undertakings, have not paid the said several sums of money or any of them or any part thereof to the said plaintiff, although often requested so to do, but the said defendants have hitherto neglected and refused, and still do neglect and refuse, to pay the same to the said plaintiff, to the damage of the said plaintiff of thirty thousand dollars; and therefore he brings suit, &c.

F. CARROLL BREWSTER,
Attorney for Plaintiff.

(Endorsed:) No. 54. Oct'r term, 1880. Circuit court of the United States for the eastern district of Pennsylvania. Humiston, to the use, &c., *vs.* Wood and Company. Narr.

SIR: Please enter rule to plead in two weeks or judgment *sec. req.*

FRANCIS E. BREWSTER,
F. CARROLL BREWSTER,
Attorneys for Plaintiff.

To clerk C. C. of U. S.

Filed January 22, 1881.

19 And afterwards, to wit, on the 1st day of February, A. D. 1881, the defendants, by their attorney, Wayne MacVeagh, Esquire, file their plea as follows, to wit:

Defendants Plead Non-Assumpsit.

Circuit Court of U. S. October Session, 1880.

RANSOM F. HUMMISTON, a Citizen of the State of New Jersey, &c.,
vs.
JAMES P. WOOD *et al.*
} No. 54.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have or maintain his aforesaid action, because they say that at the time of the making of the said agreements in the declaration mentioned the plaintiff averred and represented to the defendants that the said apparatus, known as "Humiston's atmospheric hydrocarbon apparatus," was a useful and valuable apparatus, and was fit for the purpose for which it was designed and for which the said plaintiff then and there knew it was to be
20 used, to wit, the generation of heat and light, which said representations and averments entered into and were a part of the consideration for the alleged promises and undertakings of the defendants in said declaration set forth; and the defendants in fact say that said representations were untrue, and that the said apparatus was not useful nor valuable, nor was the same fit for the said purposes for which it was designed, whereby the consideration for said alleged contracts, agreements, and undertakings on the part of the said defendants wholly failed; and this the defendants are ready to verify.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have or maintain his aforesaid action, because they say that the said "humiston's atmospheric hydrocarbon apparatus" in the said declaration mentioned was not a useful and valuable invention, and was not fit for the purposes for which it was designed and for the uses for which it was intended to be
21 put by the defendants, and for which it was sold to them by the plaintiffs, of which uses and purposes the plaintiff, at and before the making of the said agreements, had notice, but was wholly unfit for said uses and purposes, and was entirely worthless and valueless, and was known to be so by the plaintiff at the time of the making of said agreement; wherefore the defendants in fact

say that the consideration for said alleged agreement has wholly failed; and this they are ready to verify.

Jan. 31, 1881.

WAYNE MACVEAGH,
B.,
For Def'ts.

(Endorsed:) 54. U. S. C. C. Oct. sess., 1880. Humiston *vs.* Wood *et al.* Pleas. Filed February 1, 1881. MacVeagh.

22 And afterwards, to wit, on the 5th day of February, A. D. 1881, the plaintiff, by his attorneys, comes into court here and files his replication as follows, to wit:

C. C. of U. S. Oct. Sess., 1880.

RANSOM F. HUMISTON
vs.
JAMES P. WOOD *et al.* } No. 54.

And now, February 5th, 1881, as to the first plea by the said defendants above pleaded the said plaintiff replies *similiter* and issue.

And as to the second plea by the said defendants above pleaded the said plaintiff replies that he ought not to be barred from having and maintaining his aforesaid action by reason of any matter or thing in said plea alleged or contained, because he says that the representations mentioned in the said plea were true, and that the apparatus in the said plea mentioned was useful and valuable and was fit for the purpose for which it was designed, and of this the said plaintiff puts himself upon the country.

23 And as to the third plea by the said defendants above pleaded the said plaintiff replies that he ought not to be barred from having and maintaining his aforesaid action by reason of any matter or thing in said plea alleged or contained, because he says that the apparatus in the said declaration and plea mentioned was and is a useful and valuable invention and was and is fit for the purposes for which it was designed and for the uses for which it was intended to be put by the said defendants and for which it was sold to the said defendants by the said plaintiff; and of this the said plaintiff puts himself upon the country.

FRANCIS E. BREWSTER,
F. CARROLL BREWSTER,
Pro Plaintiff.

(Endorsed:) No. 54. C. C. of U. S. Oct. sess., 1880. Humiston *vs.* Wood. Replication. Filed February 5, 1881. F. E. & F. C. Brewster.

24 And afterwards, to wit, on the 29th day of September, A. D. 1881, the defendants, by their attorney, Wayne MacVeagh, Esquire, filed their additional special plea as follows, to wit:

Circuit Court U. S. October Sessions, 1880.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey,
vs.
JAMES P. WOOD *et al.*, Citizens of the State of Pennsylvania. } No. 54.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have or maintain his aforesaid action, because they say that they, the said defendants, did not at any time promise and agree with the said plaintiff that if the said plaintiff would transfer and assign the sole right of the States of Pennsylvania and New Jersey in the said patent that they, the said defendants, would pay to the said plaintiff therefor the sum of twenty-
25 five thousand dollars ($25,000) in manner and form as is in the plaintiff's declaration set forth.

And of this the defendants put themselves upon the country.

Sept. 29th, 1881.

WAYNE MACVEAGH,
H.,
For Def'ts.

To the clerk U. S. C. C.

(Endorsed:) No. 54. C. C. U. S. Oct. sess., 1880. Humiston *vs.* Wood *et al.* Additional special plea. Filed September 29, 1881. MacVeagh.

26 And afterwards, to wit, on the 29th day of September, A. D. 1881, the defendants, by their attorney, Wayne MacVeagh, Esquire, file their additional special plea as follows, to wit:

Circuit Court of the U. S. October Sessions, 1880.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey, etc.,
vs.
JAMES P. WOOD *et al.*, Citizens of the State of Pennsylvania. } No. 54.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have or maintain his aforesaid action, because they say that they, the said defendants, did not at any time promise and agree with the said plaintiff to pay said plaintiff the sum of twenty-five thousand dollars ($25,000.00), lawful money as aforesaid, in equal monthly instalments of five thousand dollars ($5,000.00) each month until all of the said twenty-five thousand dollars
27 should be paid, in manner and form as is in the plaintiff's declaration set forth.

And of this the defendants put themselves upon the country.

Sept. 29th, 1881.

WAYNE MACVEAGH,
H.,
For Def'ts.

To the clerk U. S. C. C.

(Endorsed:) No. 54. C. C. U. S. Oct. sess., 1880. Humiston *vs.* Wood *et al.* Additional special plea. Filed September, 29, 1881. MacVeagh.

28 And afterwards, to wit, on the 30th day of September, 1881, the defendants, by their attorney, Wayne MacVeagh, Esquire, file their additional special plea as follows, to wit:

Circuit Court U. S. October Sessions, 1880.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey, etc.,
vs.
JAMES P. WOOD *et al.*, Citizens of the State of Pennsylvania. } No. 54.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have or maintain his aforesaid action, because they say that at the time when the article of association in the plaintiff's declaration mentioned was concluded and executed, to wit, on the thirty-first day of July, anno Domini one thousand eight hundred and seventy-nine, the said plaintiff, by a certain deed-poll by him on
29 that day made and sealed with his seal, and to the court now shown, bearing date the day and year aforesaid, did then declare that he, the said plaintiff, would not hold the said James P. Wood, Joseph Wood, Benjamin M. Feltwell, and William H. Myers personally responsible for the payment of the said sum of twenty-five thousand dollars ($25,000.00), lawful money as aforesaid, in the said article of association mentioned, but would look to them only as trustees for the sale of the stock of the company mentioned in the said article, and for the payment to the plaintiff of such moneys as might be received from such sales until the whole of the said sum of twenty-five thousand dollars ($25,000.00), lawful money as aforesaid, should be paid.

And this the defendants are ready to verify.

Sept. 30th, 1881.

WAYNE MACVEAGH,
H.,
For Def'ts.

To the clerk U. S. C. C.

[Endorsed:] No. 54. U. S. circuit court. October sessions, 1880. Wood *et al. ats.* Humiston. Additional special plea. Filed September 30, 1881. MacVeagh.

30 And afterwards, to wit, on the 27th day of March, 1882, the defendants, by their attorney, Wayne MacVeagh, Esquire, file their plea of payment with leave, &c., as follows, to wit:

U. S. C. C. Oct. Sess., 1880.

HUMISTON, to use, &c.,
vs.
WOOD *et al.* } No. 54.

Defendants, in addition to the pleas already filed, plead payment, with leave, &c.

WAYNE MACVEAGH,
Per P.,
Att'y for Def'ts.

To clerk U. S. C. C.

(Endorsed:) 54. U. S. C. C. Oct. sess., 1880. Wood *v.* Humiston. Plea of payment, with leave, &c. Filed March 27, 1882. MacVeagh.

31 And afterwards, to wit, on the 1st day of April, A. D. 1882, the plaintiff, by his attorneys, comes into court here and files his replication to the 1st, 2nd, and 3rd additional special pleas and plea of payment, &c., as follows, to wit:

C. C. of U. S. Oct. Sess., 1880.

HUMISTON, to use, &c.,
vs.
WOOD *et al.* } No. 54.

And now, March 31, 1882, as to the first & second additional special pleas by the said defendants above pleaded, whereof the said defendants have put themselves upon the country, the plaintiff doth the like.

And as to the third additional special plea by the said defendants above pleaded the said plaintiff replies that he ought not to be barred from having and maintaining his aforesaid action by reason of any matter or thing in said plea alleged or contained, because he says that after execution of the said deed-poll in said plea mentioned, to wit, on the 30th day of September, A. D. 1879, the said de-
32 fendants promised and agreed to and with the plaintiff that if he, the said plaintiff, would agree the said association provided for in said articles should not be constituted they would pay him the said sum of $25,000 in the manner and form and for the patent right in the 2nd count of the declaration mentioned, and which said agreement the said plaintiff then and there made, and hitherto said association has not been constituted.

And of this the plaintiff puts himself upon the country.

And as to the plea of payment, with leave, &c., by the said defendants above pleaded, the said plaintiff replies *non solvit* and issue.

FRANCIS E. BREWSTER,
F. CARROLL BREWSTER,
Pro Plaintiff.

(Endorsed:) No. 54. C. C. of —. Oct. Sess., 1880. Humiston, to use, &c., *vs.* Wood *et al.* Replication to 1st, 2nd, & 3rd additional special pleas and plea of payment. Filed April 1, 1882. F. E. & F. C. Brewster.

33 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 5th day of April, A. D. 1882, come the parties aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit: 1, John J. Stadiger; 2, William Crowwell; 3, Thomas Reese; 4, John T. Ball; 5, Henry A. Stillwagen; 6, Watson Beach; 7, William H. Chandler; 8, William O. Robb; 9, Elias F. Obold; 10, John Roland; 11, Thomas H. B. Duffield; 12, James Rutherford, who are duly empanneled, returned, chosen, tried, and sworn or affirmed to speak the truth, &c., in the issue joined in this case.

And afterwards, to wit, on the 5th day of April, A. D. 1882, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendants.

34 And afterwards, to wit, on the 6th day of April, A. D. 1882, the plaintiff, by his attorneys, come into our said court here and move the court for a new trial, and file the following reasons therefor, to wit:

C. C. U. S. Octo. Sess., 1880.

HUMISTON, to use, *vs.* WOOD & Co. } 54.

Plaintiffs move for a new trial and assigns for cause—

1. That the learned judge erred in directing the jury peremptorily to find for the defendants.

DAVID W. SELLERS, *Pro Pl'ffs.*

Endorsed: 54. C. C. U. S. Octo. sess., 1880. Humiston, to use, *vs.* Wood & Co. Motion for new trial. Filed April 6, 1882.

35 And afterwards, to wit, on the 24th day of April, 1884, come the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on motion for a new trial, and having been argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time to consider thereof.

And afterwards, to wit, on the 25th day of April, A. D. 1882, come the parties aforesaid, by their attorneys aforesaid, and the court being now fully advised in the premises, it is ordered that the motion for a new trial be denied and judgment entered on the verdict in favor of defendants and against the plaintiff.

Whereupon judgment is entered accordingly.

And afterwards, to wit, on the 19th day of May, A. D. 1882, the plaintiff, by his attorney, presents his bill of exceptions; the same, having been sealed by the court, is in the words following, to wit:

36 Be it remembered that in the term of October, A. D. 1880, came Ransom F. Humiston, a citizen of the State of New Jersey, to use of William P. Horton, a citizen of the State of Ohio, into the circuit court of the United States for the third circuit, eastern district of Pennsylvania, and impleaded James P. Wood and Joseph Wood, copartners under the firm of James P. Wood & Co., citizens of the State of Pennsylvania, in a certain plea of trespass on the case, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas).

And thereupon issue was joined between them.

And afterwards, to wit, at a session of the said court, held at the district aforesaid, before the Honorable William Butler, associate justice of the said court, on Wednesday, the 5th day of April, A. D. 1882, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impan-
37 nelled (prout list of jurors); at which day came as well the said plaintiff as the defendant, by their respective attorneys, and the jurors of the jury aforesaid impannelled to try the said issues being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issues, and upon the trial the counsel of the said plaintiff called——

Mr. Brewster refers to call to produce papers.

RANSOM F. HUMISTON affirmed:

I reside in Camden, N. J.; know d'f'd'ts. I am the patentee — "Humiston atmospheric hydrocarbon apparatus for generating light and heat." I was introduced to defendants July 2, 1879, having received patent June 24, 1879. I was introduced to their superintendent, Mr. Feltwell. At the request of Mr. Feltwell the patent was introduced in their cooking-range. Defendants were present when put in. Defendants continued testing the apparatus
38 and showing it to their friends until the sale made to them on July 31. During the time they became enthusiastic of its success. James Wood talked with me—much more frequently with me than Joseph—relative the purchase. James asked me what I proposed to do with this and I told him I wanted to sell it. He said, How do you propose to sell it? I said, I have had no experience, but understand that the usual way was to form stock Co., and that if I did not find a purchaser I should organize a stock company. I said to James Wood and Joseph Wood and Mr. Feltwell that in case I formed a stock Co. I would propose to give $500 worth of stock to each of them for their kindness. This took place July 26 or July 31. James P. Wood asked me if I was particular about forming a stock company, and I said, No;
39 and he said, Would you as leave sell it to the firm? I said I would rather. He said, Name your price for Penna. I said $20,000. James said that was reasonable, and he said he would consult his brother Joseph about it. He did so, and Joseph approved, with one exception. He asked me if I could take $5,000 down and $5,000 monthly instead of cash down. I said I would. They had

some conversation in regard to raising the money. After a little talk James said it would be easier for them to form a stock company to raise the money. I spoke about attorney. After a talk Mr. Waxler was suggested, and we went to his office and then adjourned to go to Mr. Myer's office. After giving notes as to how it was to be drawn up Mr. James Wood said they wanted N. J. as much as Penna., and
What will you take for New Jersey? I said $5,000. James
40 said, On the same terms? I said, Yes; and Jos. then said he
would approve of it. This was July 31, 1879. We then went on and drew articles, including Penna. and N. J.; the papers were not executed that day; the att'y said he would have it ready in a day or so. On August 2 the papers—I think the papers were finally signed. We went to Waxler's office. The arrangement for Penna. was made before we went to his office, and at Myer's office we made the arrangement for N. J.; it was suggested that 5 names were required, and they would form two, Mr. Feltwell, Myers, and I to make the requisite number. I remember this circumstance. I can't remember the exact words; the substance was this. I know it was understood
we should receive such a portion of stock as was necessary to
41 form a corporation. The substance of what was said by
def'd'ts was that we will be the owners of the patent, but it is necessary to have certain names to an appplication for a charter, and we, myself, Myers, & Feltwell, consented to go on application articles—signed, I think, Aug. 2.

(Paper shown, dated July 31.) (Prout same.)

This is the paper I signed; it is dated July 31, but was not signed until Aug. 2, I think. Very little done after this. Mr. Waxler was to see to obtaining the charter; this was delayed by sickness. Mr. Waxler found he could not obtain a charter in Penna. without paying 10 per cent. in cash. We abandoned the idea of obtaining the charter in Penna—I mean I suppose the stock company or the
charter members abandoned it. In the mean time many
42 visited the office to buy territorial rights; the defendants received offers; a meeting was held at d'f'd'ts' office Oct. 7, I I think, and difficulties of obtaining a charter in Penna. were discussed. Jas. P. Wood and Mr. Myers were appointed a committee to ascertain the laws of N. J. relative to corporations in that State. They were to report to a subsequent meeting on November 3d. I spoke to Jos. Wood, asked him when the committee would report, and Jos. said to me, If you are perfectly satisfied we don't care about the company; we will take the ownership ourselves on the same terms (I mean as to price and payment). I cannot give the exact language; the substance was that Jas. and Jos. Wood would take the patent on the same terms as the Co. had. Def'd'ts continued to receive offers for territory. Jos. Wood stated to me that he had
received an offer for the county in which Newark was
43 of $10,000, and asked me, What do you think of it? and I
said I would take it, as it was twice as much as he had given for the whole stock. He said it was no one's business what they had given for it. He said Jersey City was in it. It is worth $40,000. Jos. said that parties in Penna. were proposing to buy the State

west of the Allegheny Mountains, and talked of $25,000 for about one-third of the State. He said it was worth more. I said it was his business and not mine. I wanted my pay. The next thing was as to Mr. Moran. Mr. Moran had seen the apparatus at the State fair, and asked me why it would not do for burning brick, and I said I thought admirably; and he called afterwards at the defend'ts' office, and a writing was signed between Jas. P. Wood and Moran, as one party, and a Mr. Corr as the other party. I told Mr.
44 Wood that Moran had brought an article to me to be signed, and I stated that I was not the owner, but that they were, and then the agreement was signed. When I told Jas. Wood this he said to Moran, Draw up the contract and I will look it over. The annual State fair of Penna. occurred in Sept., 1879. Jas. Wood said it would be a good thing to put this on exhibition. I said it would, and that he was interested in N. J. and Penna., and I in the rest of the U. S., and that if he would put up the apparatus there I would give my time — show it off. Jas. Wood there distributed many circulars about it, and I did the same. I have some of the circulars. Jas. Wood requested me to go out and see about introducing it into the brick-kiln at Moran's, and I went out there. The weather was not pleasant. Before that came Jos. induced me to go to W.
45 Penna. to make sales and to sell for cash for $25,000, and if I could not get that to take $20,000, but under no circumstances to take less than $10,000. I went to Pittsburgh and reported ready for business Decem. 24, 1879, with Mr. Bissell, stove dealer. I reported by letter; I wrote 2 letters and defendants made no reply; remained in Pittsburgh about a month; Bissell wanted to purchase; returned to Philadelphia on Jan'y 31, 1880; I reported to defend'ts the history of transactions in Pittsburgh. Jos. Wood said the reason why he did not answer my 2 letters was that he desired me to act according to my best judgment, and I told him that he had instructed me to sell for cash, and the offer was for real estate at a cash valuation. Def'dts stated that Moran was anxious to have the
46 apparatus put in the kiln, and I told them, of course; as I was away, I could not attend to it. I then found that Mr. Moran had gone to Paris, or at least over the water. I went to New York to see about putting in the apparatus there; they did not send me there, but gave me letters of introduction. After I had come back from Pittsburgh they told me they had some difficulty about the apparatus; it failed in giving out the heat. In March, 1880, I called on defendants for some money and they handed me $200; I told them I needed money; I think $200 was the amount; defend'ts had paid me $640 on acc't of purchase-money; the last payment in June or July, 1880, of $40. Defend'ts said they could not pay it then; this was in June, 1880. They gave no reason at that time. At a subsequent time, late in June, they called to see me, and said the reason they could not pay me was because there had been
47 a great deal of competition in their business, and they had made nothing in two or three years, but that they had some contracts which were better, and if I would not press them they would pay me from time to time. I did not press the matter for the

time being; that was the end at that time. I called on them for some money and they paid me this $40. I called on them again, and they said it was impossible. I told them $1,000 was wanted. They said they were getting some money from some institution, but they were disappointed. I asked them if they could let me have 500, and they said no; $200, no; $50, no; $10, and they said no; they had men to pay off and couldn't let me have $10, and I saw it was time to be looking after my securities. This was the last interview. (Assignment of Sept. 30, 1879. Prout same.) I exe-
48 cuted this. This was delivered to defend'ts and they have had it ever since.

X exam:

Have lived in Camden since—a year last December; previously lived at Cleveland, continuously 19 years; I was here for a portion of that time; came from Cleveland here. I had often lectured in my course of chemistry on light and heat, and once had attended to heat warming of a building. I was the agent for Holland's light and heat apparatus of Chicago; this was a failure; appointed October, 1878, agent for Holland's for generating light and heat from nap-tha and water. I was appointed agent by Mr. Charles Holland. I cannot tell whether he made the suggestion or whether I made it myself. I got out my own patent in June, 1879.
49 I do remember of making a scientific experiments of Holland's apparatus; I was favorably impressed; this impression ceased. A stock Co. was formed in Cleveland to handle Holland's patent; so soon as that Co. commenced operations it found that when it had not Holland's man to manipulate the apparatus it became a failure. We had Holland's apparatus on exhibition on Euclid avenue and opposite Kennard House, at 95 St. Clair St.; there was no difficulty with Mr. Holland about the place; Mr. Holland's own agent selected it; I never heard of any complaint by Mr. Holland about the character of the place; I made the complaint myself; it was selected by Mr. McCandlish, his agent. I don't know but I am his agent now, since he never withdrew the paper. In April
50 1879, I c-ased to represent Holland's apparatus, I think. I filed my application for a patent May 22, 1879 (report on Holland's invention shown); this is my report on the Holland apparatus (circular shown witness); this is a circular from the Cleveland agency. I think the capital stock was $500,000; it might have been $1,000,000; can't remember what proportion I was to have—$\frac{1}{8}$th or $\frac{1}{8}$th. Dr. Horton, pres'd't; Dr. Graham, sec. & treas.; Dr. Moffett, V. pres'd't. Dr. H. above is the equitable plaintiff in this case; he is a dentist. I think I was a director. Obtained patent June 24, 1879, and, for the first time, on the following week I saw the defendants; after a month's acquaintance this agreement was signed,
51 that agreement was for the formation of a stock company with a capital of $200,000; Jos. Wood was constituted a treasurer. I think on the same day a paper was executed which substantially was that Jos. Wood should be appointed a trustee and defend'ts not held individually liable for the payments of the

amounts stipulated, and in case they did not sell stock or territory the time should be extended for them 10, 20, or 30 days. (Assignment shown witness.) Joseph Wood was constituted trustee by this paper; the reason for the other paper was, Jos. Wood objected and said $5,000 would become due in 30 days and he did not see where the money was to be raised, and if they did not sell stock or territory they wanted the time extended. I don't remember stating
that there was no intention of holding the defendants indi-
52 vidually, or that I gave a second paper to obviate this. I
remember Jos. Wood to have objected, that there might be a doubt as to whether they were not becoming individually liable. I did not think that in a corporation there would be liability; Jas. P. Wood said he did not think, under the corporation law, they were liable. (Articles of association shown witness.) I did intend under that paper to hold them personally liable. I understood James Wood to speak about the corporation laws. I understood that under this agreement they would be personally liable. (Paper shown witness July 31, 1879.) This is my signature. Jos. Wood, I am clear, did object to sign the articles unless this paper was also
signed. I presume I offered a resolution, Oct'r 30, 1879.
53 (Letter of Feb'y 13, '80. Prout same.) The apparatus was
tried in New York, but was never put in use. It was never introduced on the elevated railroad. Dr. Miller is the half brother of my wife. I remember their writing such a letter. Mr. Bissell suggested a stock Co. in Pittsburgh. I don't think I recommended to defend'ts to form a stock Co. I did sign an agreement to form a stock Co. in N. Y. under this patent. I don't remember telling d'f'd'ts that there would be no difficulty in selling stock. At their request I wrote the first circular. I and defend'ts did strike out as they amended. I did not write everything signed by them—not without their amendment. I did not want*ed* their signature, as Jas.
P. Wood & Co. is a reputable company. I had nothing to do
54 with selling stock. (Deed-poll shown witness; reads the
clause.—Each of the parties use their best endeavor to dispose of stock.) I was to assist in the sale of stock by showing the apparatus. I did contract to aid in selling the stock. The enthusiasm for patent lasted until April, 1880, judging from letters written by defendants to parties. Joseph Wood was present Nov. 3, 1879. I could not swear that any one else was present. I think Mr. Hinkle was present, but am not certain. I inquired when the corp. under N. J. report would be made, and Jos. W. replied that he believed it was a good thing & they would take it on same terms. Mr. Rogers or Mr. Walker, I think, at Pittsburgh, made the $20,000 offer,
payable in real estate. The circulars were composed by my-
55 self; the apparatus was not introduced in the brick-kiln; never
got a cash offer of $10,000 for Western Pennsylvania.

1st payment on account of the purchase-money, July 26, 1879	$100
They took my note for that; we had no contract then.	
2d, Nov. 8, 1879	150
Dec. 1, do.	100
Dec. 26, do.	26
March 1, 1880	200
July 13, do.	40
	616

The 1st $100 was not on account of the purchase-money; all the other payments, I understood, were on account of purchase-money. I understood that this was purely to apply on account of purchase-money. Note never handed back to me.

(Due bill, July 26, '79, shown.) This mine.

(Due bill, Nov. 8, '79, shown.) This is mine also.

On Nov. 8, '79, I did give a due bill of $150; the rest no
56 due bills. The first serious complaint was in February, 1880. They had found it all right, except merely mechanical defects; I remember that when somebody turned it on it overflowed, and there was an explosion; heard there was an explosion while Mr. Wentworth was using it; never heard about Mitchell's experiments. There were 2 explosions. Feltwell told me. I saw but one explosion. I know Leonhard was burned; heard Robinson say his machine blew out. The apparatus was largely for domestic use. These are the same gases as anthracite coal. These are the directions issued by defendants. They were composed by me. This is the circular issued by the defend'ts. It was prepared by me and approved by them.

(Book shown witness.) These are the by-laws of the Cleveland company.

57 Agreement July 31, 1879, read in evidence. (Prout same.)
2nd do. do. do. (Prout same.)
Assignment Sept. 30, 1879, to Wood as trustee. (Prout same.)
Wood's directions. (Prout same.)
Pl'ff's circular. (Prout same.)
D'f'd'ts' do. (Prout same.)
Letter of Feb'y 12, 1880, to J. P. Wood & Co. (Prout same.)
Letter Feb'y 13, 1880, to pl't'ff. (Prout same.)
Letter Feb'y 18, 1880, to defend'ts, identified by witness and read. (Prout same.)

Also due bills of plaintiff, July 6 and Nov. 8, 1879; report of plaintiff and circular as to Holland's apparatus; prospectus and by-laws of Cleveland Light & Heat Co.

WM. H. MYERS, notary public, sworn:

Know plaintiff and defend'ts; def'd'ts came to my office
58 and brought Waxler to draw up the agreement and my name was put in to furnish the number to get up the charter. Charter did not go through; money had to be paid. After a little

time, a meeting of the corp. — held at def'd'ts' office to ascertain if a charter could be got in N. J. James P. Wood and myself were appointed a committee to obtain information; James P. Wood requested me to obtain information, which I did, but nothing further was done. In Dec., 1879, a gentleman, Mr. Frank Woods, called on me about a purchase of West Penna. I saw Jos. Wood, and he said it might be a good thing—might be sold, probably, for sufficient to pay for the patent. During the conversation we spoke of the difficulty of raising the company. Jos said they had thought something of taking it themselves and of abandoning the company; they thought territory sufficient might be sold to pay Humiston.

59 Defend'ts spoke to me of sending the plaintiff to Pittsburgh. In May I saw Mr. Wood and Humiston together at an interview, in which he s-oke of offers in New York, and that they had never made any answers. When they said they thought of abandoning the company def'd'ts employed me to make sale, and they said they would give me a commission, $5,000 if $25,000 — realized, or a less sum a proportionate commission. This was about 10th of December, 1879. I think there was something said of it before. This is my signature. No corporation was ever formed. I had no interest whatever in the patent at the date of the paper I signed.

Q'st. Had you any interest in the patent at the date of this agreement, July 30, 1879, providing for a corporation to be formed?

I had not. After I signed the agreement I never advanced

60 any money or other valuable consideration to the corporation.

X exam.:

I had known pl't'ff about 3 months when I introduced him to defend'ts. My introduction was through Dr. Graham, who had written about Holland's patent. Pl't'ff had not obtained his patent when I saw him first. Pl't'ff said, on trial, he had found the Holland's patent a failure. Frank Wood is the editor of the N. Am. Manufacturer.

Pl't'ff closes with right to put in letters patent.
Mr. MacVeagh moves for a nonsuit.
Judge directs the jury to find for the defendants.
Pl't'ff excepts.

61 (Copy.)

Agreement.

HUMISTON *vs.* WOOD.

Copies of papers in evidence.

Articles of agreement made and concluded this thirty-first day of July, 1879, between Joseph Wood, of the city of Philadelphia, of the first part; James P. Wood, of the said city, of the second part; Benjamin M. Feltwell, of the said city, of the third part; William H. Myers, of the said city, of the fourth part, and Ransom F. Hu-

miston, of the city of Cleveland, of the fifth part, as follows, to wit: Each of the said parties hereto, for and in consideration of the mutual covenants and agreements hereinafter mentioned to be performed and kept by them, do for themselves, their and each of their respective heirs, executors, administrators, and assigns, covenant, promise, and agree to and with each other that they will
62 associate themselves together for the object of obtaining a charter of incorporation under the name and title of the "American Light and Heat Company of Philadelphia, Pennsylvania," said organization to be perfected and to be for the manufacture and sale of Humiston's atmospheric hydrocarbon apparatus for generating light and heat and for the manufacture and sale of fixtures for the same; also for the preparation and sale of oil suitable for the use of the said apparatus and for any other business or matter necessary in carrying out the purposes aforesaid.

That the capital stock of the said company shall be four thousand shares, each of the par value of fifty-dollars, making the aggregate sum of two hundred thousand dollars.

That each of said parties shall use his best endeavors in disposing of said stock.

That the said party of the fifth part shall forthwith transfer
63 to the other parties hereto the sole right of the improvement in apparatus for burning hydrocarbons for the States of Pennsylvania and New Jersey, letters patent for said improvement being No. 216,853 and bearing date the 24th day of June, A. D. 1879, said transfer to cover any and all improvements hereafter to be made on said apparatus.

That the said party of the 5th part shall receive from the concern or association or corporation for said patent right for said States the sum of twenty-five thousand dollars ($25,000), to be paid to him as follows, to wit:

Five thousand dollars thereof within thirty days from the date hereof; the further sum of five thousand dollars in sixty days from the date hereof; the further sum of five thousand dollars in ninety days from the date hereof; the further sum of five thousand dollars in one hundred and twenty days from the date hereof, and
64 the balance of five thousand dollars in one hundred and fifty days from the date hereof, the said payments to be made to the said party of the fifth part or his legal representatives.

Regular books of accounts of the expenses and profits of the business shall be kept.

The principal place of business shall be in the city of Philadelphia.

Joseph Wood shall be treasurer of the concern or association, and is authorized to pay any necessary expenses incurred, and he shall be allowed to deduct those expenses out of the first moneys coming into his hands belonging to said concern or association.

It is also agreed that immediately after the organization aforesaid that the terms of this agreement shall then forthwith cease.

In witness whereof the said parties to these presents have hereunto set their hands and seals.

(Signed)	JOSEPH WOOD.	[SEAL.]
"	JAMES P. WOOD.	[SEAL.]
"	B. M. FELTWELL.	[SEAL.]
"	WM. H. MYERS.	[SEAL.]
"	R. F. HUMISTON.	[SEAL.]

Sealed and delivered in the presence of—
(Signed) DAN'L S. HINCKLE.
" E. D. VAN HORN.

65 Copy.

2d Ag'mt.

Whereas by a certain agreement made the thirty-first day of July, 1879, wherein James P. Wood, Joseph Wood, Benjamin M. Feltwell, William H. Myers, and Ransom F. Humiston agreed to form a company for the manufacture and sale of Humiston's improvement in apparatus for burning hydrocarbons, and also agreed to pay the said Ransom F. Humiston for all his interest in the letters patent for said improvement for the States of Pennsylvania and New Jersey the sum of twenty-five thousand dollars, to be raised from sales of the stock of said company in payments of five thousand dollars each, the first payment to be made in thirty days after the execution of the agreement, and five thousand dollars every thirty days thereafter until the whole sum be paid; therefore, in consideration of said agreement, I hereby agree with the said James P. Wood, Joseph Wood, Benjamin M. Feltwell, and William H. Myers that I
66 will not hold them personally responsible for the payment of the said sum of twenty-five thousand dollars, but will look to them only as trustees for the sale of the stock of the said company and the payment to me of such moneys as may be received for such sales until the whole is paid; and I further agree that if sufficient money be not received to pay the first instalment of five thousand dollars when it becomes due that I will extend the time of payment for ten, twenty, or thirty days, as may be necessary.

In witness whereof I have hereunto set my hand and seal the day and year first above written, that is, the thirty-first day of July, 1879.

(Signed) R. F. HUMISTON. [SEAL.]
Witness:

The word August, in the second line from the top, stricken out & July written in before signing.

67 Copy.

Assignment.

Whereas I, Ransom F. Humiston, of the city of Cleveland and State of Ohio, did obtain letters patent for certain new and useful

improvements in apparatus for burning hydrocarbons, which letters patent bear date the twenty-fourth day of June, 1879, and are numbered 216,853; and whereas James P. Wood, Joseph Wood, Benjamin M. Feltwell, and William H. Myers, of the city of Philadelphia and State of Pennsylvania, and said Ransom F. Humiston have associated themselves together for the purpose of forming a company to manufacture and sell said apparatus and territorial rights under said patent, and have appointed the said Joseph Wood their trustee to take the title of said patent on behalf of said association, and are desirous of acquiring an interest therein:

Now, this indenture witnesseth: That for and in consideration of the sum of twenty-five thousand dollars, lawful money of the
68 United States of America, to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over to the said trustee all the right, title, and interest which I have in the said invention as secured to me by said letters patent for, to, and in the States of Pennsylvania and New Jersey, and in no other place or places, the same to be held and enjoyed by the said Joseph Wood, trustee, for the said association, together with such improvements, patented or otherwise, which I may hereafter make to said apparatus, for his own use and behoof as trustee aforesaid and the use and behoof of his legal representatives, to the full end of the term for which said letters patent are to me granted, as fully and entirely as the same would have been held and enjoyed by me had this sale and assignment not been made.

In testimony whereof I have hereunto set my hand — affixed my seal this thirtieth day of September, A. D. 1879.

(Signed) R. F. HUMISTON. [SEAL.]

Sealed and delivered in presence of—
(Signed) ALBERT S. COOPER.
" RICH'D M. COOPER.

The words "As trustee aforesaid" interlined before signing.

69 *Wood's Instructions.*

Humiston's heating apparatus.

Hints and cautions on starting and regulating the fire.

NOTE.—All the valves open by turning to the left and close by turning to the right.

1st. Open the main supply valve near the tank.
2d. Open the needle valve.
3d. Open the stove doors and remove the covers.
4th. Take the wire match-holder, light the match, and hold it in the "lighting cup," then press in the lighting valve till the cup is nearly full.
5th. When the oil in the lighting cup is nearly all burnt, requir-

ing about three minutes, then open the feed valve, just a little, till the "indicator" points to fig.

6th. Now the gas begins to burn from the "distributor." After it has burnt a moment, gradually increase the fire by turning on more fuel till the apparatus is well heated;* then, by partially closing the "feed valve," diminish the fire to the amount desired.

7th. The "indicator" turned to Fig. — gives lowest fire at about 1 gill per hour.

The "indicator" turned to Fig. — gives low fire at about 2 gills per hour.

The "indicator" turned to Fig. — gives small fire at about 1 pint per hour.

The "indicator" turned to Fig. — gives medium fire at about 1 quart per hour.

The "indicator" turned to Fig. — gives large fire at about 2 quarts per hour.

8th. For Bunsen flame open the lower jets, and for luminous flame close them.

9th. Keep the "needle valve" well open, and lessen the feed if there is "pulsation," and this will prevent clogging.

10th. When you turn off the fire at night close the main supply valve at the tank.

JAS. P. WOOD & CO.,
41 *S. 4th St., Philadelphia, Pa.*

70 *Plaintiff's Circular.*

Humiston's apparatus for generating heat and light for the million without wood, coal, or coke, candles, lamps, or coal gas, eliminated from liquid fuel. The condensed sunbeams of former ages now brought out and set free by the new atmospheric hydrocarbon light & heat generator; acting on the Bunsen principle; patented by R. F. Humiston June 24, 1879; adopted by the American Light and Heat Co., of Philadelphia, Pa. "Peerless among its rivals and revolutionary in its character," it is the simplest and best device for developing light and heat from petroleum and its distillates.

The following may be noted among its many advantages:

1st. The apparatus is a finished piece of mechanism, "a most ingenious, compact, and practical device."

2d. It is simple in construction and not liable to get out of order.

3d. It is easily understood and manipulated with perfect safety and success by ordinary domestics.

4th. It can readily be adapted to any stove (old or new), range, grate, furnace, boiler, or gas fixtures now in use.

5th. It is perfectly adjustable to the amount of fire or heat required—now burning for an hour or a night with a small "Bunsen flame," absolutely free from smoke, costing not more than one mill

*At kindling, when the fire is largest, quickly close and open the needle valve, which will cause a good puff and keep the jet clear.

an hour, and then, in an instant, increased just as little or just as much as required, even a hundred fold, when copper and even cast iron melt in a few minutes.

6th. By a simple device, a check upon the consumption and waste of fuel is provided. This check is under the control of the housekeeper, instead of the servant, and while it is an element of economy it is also one of safety.

71 7th. By another device the flame is thrown upward or downward at pleasure, which is exceedingly desirable, both in heating and cooking apparatus.

8th. The needle valve is an important part of the apparatus to remove obstructions from the flame jet, and also to increase or diminish the size of the jet and thereby secure the most perfect combustion.

9th. Graduated indicators show just how much fuel is being consumed and just where to set the induction valve to secure any amount of heat desired for cooking or heating purposes. By a simple attachment a man in his chamber may know the state of his fire in his furnace and perfectly control it without leaving his room.

10th. The fire is produced by the combustion of gas generated from liquid fuel, slowly or rapidly as required, with automatic exactness. It is just as convenient and the cost is less than one-fourth as much as the same amount of fire from coal gas.

11th. Being completely under control, with a constant and uniform heat maintained, it is perfectly adapted to all heating and culinary operations—baking, broiling, roasting, frying, etc., with the greatest perfection and dispatch.

12th. The fuel contains no sulphur to generate noxious gases or to attack and destroy the heating apparatus. The stove or furnace should last a hundred years.

13th. A match is all the "kindling-wood" required. The fire is instantly started, increased, diminished, or extinguished by turning a valve.

14th. It is the neatest fire in the world. There is for a moment a little smoke in kindling; there should be none afterwards to fill the room whenever a cover is lifted or a door opened. There are no ashes to be removed, or cinders, clinkers, dust or dirt.

15th. It is the most economical fire in the world, directly or indirectly, by having just as much or just as little as you want, or by instantly turning it off altogether, instead of leaving a great bed of coals to waste its heat when no longer needed. The saving in board and wages of extra service in making and tending fires, dusting furniture, bringing in fuel, and carrying out ashes would often be more than the entire cost of the fuel itself, to say nothing of the cost of coal-bins, wood-boxes, scuttles, shovels, tongs, and pokers. One pound of this liquid fuel has a thermic or heating value equal to five pounds of the best coal.

16th. "It is the safest fire in the world." Insurance men are now beginning to concede this point. "There are no hot ashes, coals, or cinders to fire the ash-box; no soot-burning chimneys; no sparks to fall upon the roof; no coals to roll out from an over-filled grate;

no brands to tumble; no sparks to snap, and no hot bed of coals to start a first-class conflagration when all are asleep." These seven sources of danger, in which nearly all our destructive fires originate (that are not incendiary), are all avoided by those who use the Humiston apparatus.

17th. It is the most beautiful fire in the world. As you look into your parlor grate all the colors of the spectrum may be seen, often rivaling in beauty the colors of the rainbow. The whole room is bright and cheerful.

18th. This fire has the widest range of application—for domestic purposes; as a generator of steam for manufactories, railroad locomotives, and steam navigation; for smelting ores, heating and melting iron, evaporating salt, sugar, etc.

72 19th. The illuminating gas we generate has no superior. It is the richest, purest, and safest gas in the world. It is a fixed gas, and not merely carbureted air; it is free from the sulphur and ammoniacal poisons of coal gas. Its illuminating power is several times greater, and the danger of explosion is many times less than that of common gas. Compared with the kerosene lamp, our gas is neater and more desirable every way and a "thousand times safer." For domestic purposes it is generated in the cook-stove or range without extra heat or trouble, while performing the ordinary culinary operations of the household, and costs about one-tenth of the price of coal gas.

20th. Our gas apparatus enables a man to be master of his own house, and not subject to the caprice of gas companies.

Advantages over the double retort oil and water apparatus.

1st. We save the cost of water tank, retort, pipe, coil, and valve, which are all useless.

2d. We avoid the filling up of the apparatus from the sediment of dirty water and the deposit of calcareous matter, which cannot be avoided when the water is hard, rendering the apparatus useless in a few weeks at most. Many know by sad experience what this is.

3d. By a little device we save our apparatus from filling up with soot or other carbonaceous matter. All our predecessors have had trouble from that source.

4th. Our fuel never freezes, but the water tanks and pipes do freeze and burst. Even the cover of "nine patents" is too thin to keep out the frost, dirt, lime, and carbon.

5th. We offer you a quiet, still fire, compared with the roaring, rushing, steaming "water fire-works."

6th. We give you a very low fire to burn all night, if you desire it, without the least smoke or deposit of soot or carbon. One patent does the work for us where nine fail elsewhere.

7th. Ours is a more economical fire. Water when passing into the state of vapor or steam is a great thief, stealing, hiding away, and making off with a thousand degrees of latent heat. If you "stop thief!" he can only give back what he stole, leaving you to pay the costs of suit and pursuit, while a low fire exhausts the exchequer and breaks the bank.

8th. One of the very good uses of water is to put out fire. It is a little old-fashioned, it is true; still it works pretty well yet. I admit that the elements of water—oxygen and hydrogen—in combining, evolve an immense amount of heat, and I once supposed that the disintegration of the elements of water might be practicable; but when I learned, according to the highest authority, that "it requires a heat of 4,532° Fah. to disassociate the elements of water," I very naturally inquired what, then, becomes of the cast-iron retorts, stoves, etc., which would melt down at only about one-half of the above heat.

9th. Several scientific committees have, during the past year, reported adversely to the use of water vapor for increasing the heat of fire.

10th. A beautiful "needle valve" adjusts the size of the flame jet to the amount of fuel used, and instantly removes all obstructions. The "nine patents" have nothing of the kind.

11th. Our "lighting cup" is better, more convenient, and does not leak.

12th. Our perforated adjustable sleeve and distributor for changing the direction of the fire add much to the value and efficiency of our burner.

13th. The lighting and feed valve stops are important elements of safety and economy not found in other apparatus.

73 Certificates and testimonials.

The undersigned, having been invited to test the cooking qualities of the Humiston apparatus, take pleasure in stating that on the 25th of August, 1879, we met at the business house of Jas. P. Wood & Co., 41 S. 4th street, Philadelphia, and placed in their large cooking range a joint of lamb, a knuckle of veal, and a pair of chickens. In five minutes from starting the fire the ovens were hot enough for roasting, and in three minutes more the top of the range and ovens were red hot, and we ordered the fire diminished. This was instantly done by turning a valve. When the roasting was finished, all declared that they never saw it done better or more speedily. The cooking seemed uniform throughout, and the meats were full of juice, savory and delicious. A tenderloin steak was broiled directly over the fire in five minutes, and better steak was never eaten. While the cooking was going on, illuminating gas of the very best quality was generated, and burning at the same time. Before leaving the house we all left our orders for the apparatus to be placed in our restaurants as soon as possible.

SAM'L KESSLER,
55 *South Fourth Street.*
G. B. TRESCH,
112 & 114 *Hudson Street.*
WM. H. HACHER,
15 *South Fourth Street.*
R. D. CUMMINGS,
2002 *North Twenty-second Street.*
J. T. HARKER,
S. E. corner Fourth & Chestnut Streets.

The undersigned being present at the above test of apparatus conducted by the proprietors of certain restaurants, and having witnessed the cooking and partaken of the viands, we heartily concur in all they have said of the excellence and efficiency of the Humiston apparatus for generating heat and light.

DANIEL S. HINKLE,
Chestnut Hill, Philadelphia.
E. D. VAN HORN,
721 *North Nineteenth Street, Philadelphia.*
ROBERT HENDERSON,
250 *Market Street, Philadelphia.*
JEREMIAH LENAHAN,
2345 *North Fourth Street, Philadelphia.*
JOHN GALLAGHER,
501 *North Thirteenth Street, Philadelphia.*
CONRAD LEONHARDT,
27 *Sheriff Street, Philadelphia.*

For several months I have been thoroughly familiar with the practical working of the Humiston heating and lighting apparatus, and nothing could be more satisfactory. It is all that the patentee claims, and a great deal more; it is doubtless one of the greatest inventions of the age.

W. H. MYERS,
729 *Walnut Street.*

The following is from the Rev. D. M. Graham, D. D., the founder and late president of Hillsdale college, Michigan:

"Your fire beats the world! It seems to me that nothing can compare with it; so much heat with so little fire and so small a consumption of fuel! My retort is red hot, and yet I can see nothing but a small blue flame."

D. M. GRAHAM,
178 *Washington Street, Boston, Mass.*

The following testimonial is from Jas. P. Wood & Co., one af the old and reliable houses of Philadelphia, whose ranges and steam heaters are well known throughout the country:

Prof. Humiston's apparatus has been in successful operation in our range and heaters for the last two months. There has never been the slightest accident or delay through any clogging or defect whatever. This apparatus has more than vindicated the claims of the patentee—evolving more heat and light from the material consumed than was claimed by the inventor. We have adopted it.

Philadelphia, September 9th, 1879.

JAMES P. WOOD & CO.,
No. 41 *South Fourth Street, Phila.*

B. F. Feltwell, sup't.

We have had the Humiston apparatus in our house for several weeks and it has never clogged, got out of order, or failed to do

good service, and we never saw a neater, safer, more convenient, beautiful, or economical fire. We commend it to everybody.

JOHN PULLAR.
MARGARET PULLAR.

Territorial rights for the manufacture and sale of this apparatus are now offered. A few States are already sold.

State, county, city, and town rights may be obtained by addressing—

R. F. HUMISTON,
Care American Light and Heat Co. of Philadelphia,
41 *So. Fourth St., Philadelphia, Pa.*

74 *Wood's Circular.*

Prof. Humiston's new atmospheric hydrocarbon burner for generating light and heat from petroleum and its distillates.

To the public:

Upon examination of Pros. Humiston's apparatus we found it to be a most ingenious, compact, and, apparently, practical device for the accomplishment of his purpose. As practical men, however, we were unwilling to indorse this "new wonder of the age" simply upon the theoretical merits which it seems to possess. We therefore requested the inventer to place his apparatus in our large ranges, stoves, and steam-heaters and allow us to test it to our full satisfaction, to which request he readily assented. For the last thirty-five days we have had the apparatus at work at our place of business, and under the closest scrutiny, but we have never found it at fault in a single instance; and our experiments have more than verified the claims of the patentee—more heat being generated and less fuel required than he represented. As a light and heat generator the Humiston patent is doubtless peerless among its rivals and revolutionary in its character. We see no reason why its adoption should not become general. It is a finished piece of mechanism and works obediently to the will of the manipulator. Responsive to the touch, the fire is at once increased or diminished a hundred fold, or held at any given point for an indefinite period. Any servant of ordinary intelligence should be able to master the apparatus in a few minutes. The oil or fuel from which the gas and fire are made is never handled, or even seen by the domestics or household, and experts as well as insurance agents have pronounced it "the safest fire in the world."

The illuminating (fixed) gas, which is generated without extra fire, while the ordinary meals are being prepared, is of superior brilliancy and purity, and costs not more than one-tenth the price usually paid for coal gas. The apparatus is readily adopted to any ordinary stove, grate, furnace, or range. Probably the strongest point in this invention are the neatness and utility, comfort and convenience, economy and safety which are secured by its use. As this invention (patented June 24th, 1879) becomes known we believe

there are thousands who will cheerfully relinquish their coal-bins, scuttles, tongs, shovels, pokers, smoke, soot, dust, ashes, cinders, and dirt, wear of carpets and destruction of furniture, cost of kindlings and extra attendance, and the discomforts and exposures of a variable temperature and gladly adopt the Humiston apparatus.

After many years of practical experience, and with our heating apparatus widely known, and adopted in many of the most important public and private buildings throughout the country, we do now unhesitatingly commend to the public the Humiston apparatus for generating light and heat as one of the most useful discoveries of the age; and, as the best guarantee of our confidence in the invention, we take pleasure in stating that we have ourselves adopted it.

JAMES P. WOOD & CO.,
No. 41 South Fourth Street, Philadelphia.

B. M. FELTWELL,
Superintendent.

[Endorsed:] No. 3. Wood's circular. Issued in August, 1879.

75 (Copy.)

NEW YORK, *Feb.* 12, 1880.

Care Dr. A. P. Miller, Tribune office.

Messrs. J. P. Wood & Co.

DEAR SIRS: The sup't of the elevated R. R.'s called on me to-day to see my fires with a view of determining as to their adaptability to running the locomotives on the above-named roads. He seemed to be wonderfully pleased with my fires and frankly admitted that he believed that I could easily furnish sufficient heat to run his locomotives, and, further, that the absence of ashes, smoke,
76 foul gases, cinders, &c., and the doing away with stokers, coal-heavers, &c., and the perfect control of the fire were strong points in my favor. Before leaving he assured me that he should recommend its adoption by his company, if experiments which the Co. would aid me in making should confirm the favorable opinion he has now formed. He made an appointment for other officers of the Co. to meet *meet* me on Saturday next at 11 o'c'k. We are keeping the matter very quiet here till after the experiments are made & the sale is effected; but there is another matter in which you have a greater interest. A party called to-day (after having seen my fires several times before) and expressed the conviction that my apparatus could be easily adopted and furnish sufficient heat to run ordinary locomotives & do it more economically than it can be done with coal. He is a man of standing and influence with the R. R. men. He wanted to know if I had yet
77 sold the right to use my apparatus for R. R. purposes in any of the States. I told him that I had sold the right for all purposes for Penna. and N. J. He told me that I had made a great mistake, for that sale almost shut up N. Y. city from her most important outlets. I told him that I felt confident that I could buy

back the right for R. R. purposes for those States at a reasonable figure.

Now, I feel confident that this man means business, and he is known to be connected with a wealthy corporation, and I believe that if you will authorize me to sell just so much of the right as is applicable to R. R. purposes alone for Pa. & N. J. that I can do it within thirty days from this date and bring you money enough to pay me off and still you will own the right for the above-named States for all purposes except for use on R. R'ds, Now, I want you to name your lowest price for sixty days. I mean that you
78 shall give the refusal for sixty days at the price you name, selling only the R. R. right. He is to call for my answer on Saturday p. m. at 3 o'c'k.

This will give you all day to-morrow to consider the matter, and if you mail your letter on Friday night I will be sure to get it in time to meet my party on Saturday.

Give me your minimum price and I will get as much more as possible. Nap-tha will be furnished in bulk in large quantities at 3½c. a gallon, & I believe that it is higher now than it has ever been before.

Please answer in time.

Truly y'rs,

(Signed) R. F. HUMISTON.

79 (Copy.)

PHILADELPHIA, *Feb.* 13, 1880.

Prof. R. F. Humiston.

DEAR SIR: Yours of yesterday rec'd. We are pleased to learn of your prospective success with R. roads.

With reference to price for our interest in Penna. and N. J. for R. R. purposes we leave it entirely with you to make such arrange— as you may deem best for the interest of all concerned.

Yours truly,

(Signed) J. P. W. &. CO.,
Per HINKLE.

80 (Copy.)

NEW YORK, *Feb'y* 18, 1880.

Care Dr. A. P. Miller, Tribune office.

Messrs. Jas. P. Wood & Co.

DEAR SIRS: I have succeeded in getting the consent of the N. Y. El. R. R. Co. to try my heating apparatus for running their locomotives. We are to commence fitting up an engine to-morrow morning. Please send me by express, care of R. Stewart, Esq., sup't east divis. Elevated R'y Co. N. Y., eight retorts and burners, which Capt. Wentworth has all ready. He has 4 sets put together complete, & there are 4 sets more that the machinist has fitted up, but the gas-pipes & needle valves are not attached. Send the 4 sets complete, with the long-handled needle valves attached; also send the other

4 sets just as they are, but put up with them 4 more needle valves of the largest bore, so that I can fit out here 8 complete sets.
81 Please do not forget to talk with James about the money matters. I should not trouble you now but I need it more than ever; send what you can spare.

Truly y'rs,

(Signed) R. F. HUMISTON.

James will remember saying to me that until sales were made that I could have such small sums as I needed for my current expenses.

(Copy.)

PHILA'D'A, *July* 26, '79.

Due James P. Wood & Co. one hundred dollars on demand, value rec'd.

$100.

(Signed) R. F. HUMISTON.

(Copy.)

PHILA'D'A, *Nov.* 8, 1879.

Due James P. Wood & Co. one hundred and fifty dollars on demand, value received.

$150.

(Signed) R. F. HUMISTON.

81½ UNITED STATES PATENT OFFICE.

RANSOM F. HUMISTON, of Cleveland, Ohio.

Improvement in Apparatus for Burning Hydrocarbons.

Specification forming part of Letters Patent No. 216,853, dated June 24, 1879; application filed May 22, 1879.

To all whom it may concern,

Be it known that I, R. F. Humiston, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful apparatus for burning hydrocarbons as fuel; and I do hereby declare that the following specification, taken in connection with the drawings furnished and forming a part of the same, is a clear, true, and complete description thereof.

My improvements relate to that general class of apparatus in which hydrocarbons are burned in a gaseous condition; and the object thereof is to attain, with an economic consumption of hydrocarbon, a varied capacity for operating either at minimum or maximum grades of heat, or at any intermediate degree, without the aid of water or steam, or the undue accumulation of solid products of combustion upon and adjacent to surfaces directly exposed to the flame.

For the attainment of these ends, in burning hydrocarbons on a large scale, my invention mainly consists in the combination, with an atmospheric or "Bunsen" burner, of a retort having a radiating-

surface equal to or greater than the area of flame from the burner, located immediately above said burner, and which operates as a complete deflector to the heat and flame therefrom, a pipe connecting the retort with the burner, and a fire-pan below the retort for developing the initial supply of gas to the burner.

The term "atmospheric burner" as used herein by me is not intended to embrace that class of illuminating-burners within which air and gas are mingled prior to ignition, and with which a white or light-giving flame is developed, and which therefore possesses value only in proportion as said flame is white and solid; but, on the contrary, I include within the meaning of that term only such burners as operate on what is well known as the "Bunsen" principle, within which air and gas are so mixed prior to ignition that a blue or heat-yielding flame is developed, which is practically deficient in light-yielding properties. These two practically opposite results are due solely to the fact that air is used sparingly in the first instance and freely in the second.

Illuminating-lamps of the so-called "vapor-burner" class have heretofore embodied within the standards thereof a retort, or its equivalent, a burner below it, a pipe connecting the two, and a fire-pan for initial operation; but in none of these could the retort practically operate as a deflector to the flame, for two reasons, viz: The white flame impinging upon the retort would not only unduly develop solid carbon or lamp-black thereon, but it would also so derange and shield the flame that its light-giving properties would be impaired, and still further result in disagreeable odors; neither is it new, broadly, to have a gas-flame deflected by or impinge upon a retort above it in apparatus heretofore embodying a retort, a burner, and a pipe connecting them; but, so far as my knowledge extends, the employment of a blue-flame burner operating on the Bunsen principle is a novelty in that combination, and it is due to that fact only that I can successfully deflect the flame by the retort, and thereby apply the heat directly thereto without the accumulation of carbon thereon and attain the attendant economic results.

In that class of apparatus in which steam is decomposed for attaining a more perfect combustion of the gas or vapor there is but little accumulation of carbon upon the retort during its operation at high temperatures; but if a temperature be desired lower than that competent to decompose steam, imperfect combustion is inevitable, which is attended with the development and accumulation of solid carbon and a consequent waste of fuel. The fire-pan referred to as an element in my combination has been heretofore largely used in various forms.

I am also aware that heretofore hydrocarbon-gas stoves have embodied an atmospheric burner of the Bunsen class, a firing-pan, and a retort located above the burner, so as to be heated by the flame from the burner, and also that in some of said stoves the flame has in part been deflected by the lower surface of the retort; but in all such stoves known to me the main bulk of the flame is utilized for cooking, and the consumption of hydrocarbon is on a small scale, suited only for light cooking operations.

82 I will here again state that the object of my apparatus is to attain high temperatures and great volume of heat by burning hydrocarbons on a large scale, and that, therefore, with my apparatus, these pre-existing gas-stoves may be used to advantage in many cases—as, for instance, my apparatus may be located within a hot-air furnace of a dwelling-house containing several suites of rooms, all of which are heated by said furnace. For cooking purposes, each suite of rooms, being connected by pipes with my retort, will admit of the use of hydrocarbon-gas stoves of any of the well-known types, the variable capacity of my apparatus being such that a practically uniform house temperature can be maintained regardless of the additional cooking requirements.

My invention further consists in the combination, with a retort, of an open-topped atmospheric burner, operating on the Bunsen principle, connected with the retort and located below it, so that its bottom operates as a cap to the burner and as a deflecting-plate for the flame, whereby a thin disk-shaped flame is developed through the annular opening between the top of the burner and the retort, and in direct contact with the latter.

My invention further consists in the combination, with a retort and an open-topped atmospheric burner, operating on the Bunsen principle, mounted on a standard below, and connecting with the retort, of means whereby the two may be adjusted in position with relation to each other for graduating the space intervening between burner and retort, and thereby to attain a disk-shaped flame of any desired volume. I prefer that the retort be stationary and the burner movable, as by a cap on its standard, and I therefore mount the cap of the burner by means of a threaded connection with its standard, so that it may be raised or lowered by rotation.

My invention further consists in the combination, with an atmospheric gas-burner operating on the Bunsen principle, and provided with two or more flame-jets, or series of jets, one or more of which can be separately closed and opened, of an air-induction valve, by which the supply of air to the burner may be graduated in proportion to the number of flame-jets required, and the desired quality of flame attained, whether one or more of the jets, or series of jets, are in service.

I do not claim, broadly, flame-jets which can be wholly or partially closed, nor air-induction valves, for I am well aware that these have been heretofore separately employed in illuminating vapor-burners; and I also know that in that same connection a single illuminating flame-jet or single series of jets has been used in combination with an air-induction valve.

The open-topped burner before referred to has been described as capable of being adjusted with reference to the retort for affording a thick or a thin flat circular flame, and it is obvious that this adjustable capacity in that burner renders it the equivalent of a burner having one or more flame-jets or series of jets, which can be separately closed or open, for in both cases the volume of heating-flame can be varied by reducing or increasing the discharging capacity of the burner, and I therefore intend the last-stated feature of inven-

tion to include the open-topped burner, adjustible as described, as an equivalent of the burner therein described, whether additional flame-jets be employed or not.

The particular construction of burner preferred by me consists of an annular shell provided with two or more annular series of jets in different planes, in combination with a register-jet valve, which controls one or more of said series, and such a burner constitutes another portion of my invention.

For controlling the passage of gas to the burner I employ a needle-valve, which is provided with guides to assure a truly longitudinal movement, and is operated by a hand-rod, a rack-gear, and a pinion on said rod, and these parts, as a particular combination, constitute another feature of my invention.

I am aware that needle-valves operated by hand-rods with cams and with links have heretofore been employed.

The object of my particular construction is to assure a true coincidence of the valve with its seat and an effective and durable arrangement of parts for operating the valve.

To more particularly describe my invention I will refer to the accompanying drawing, in which—

Figure 1 represents, partially in side view and partially in section, an apparatus embodying my invention adapted to heating purposes and also to the generation of illuminating-gas. Fig. 2 represents a plan of the same with the top of the double retort removed to disclose its interior construction. Fig. 3 represents my burner in central vertical section. Fig. 4 represents the burner in top view. Fig. 5 represents the needle-valve in detail. Fig. 6 represents in end view a graduated dial-plate and a valve-stem, by which the supply of hydrocarbon may be controlled. Fig. 7 represents, in vertical central section, one form of valve-chamber with its needle-valve. Fig. 8 represents, in side view, a retort and its connections adapted to heating purposes only.

A denotes the retort, which in Figs. 1 and 2 is divided into two compartments, *a* and *b*, for respectively generating gas to supply the heating-burner and for illumination.

The hydrocarbon is contained in a receptacle (not shown) arranged for delivering its contents under pressure to the retort, either by reason of its elevation, or the employment therewith of an air-pump, in a manner well known in this connection. The hydrocarbon is conveyed by pipe *c* toward the retort, and to the different chambers thereof by branch pipes *d* and *e*, both of which are provided with suitable cocks for controlling the supply of fluid.

83 A dial-clock, *f*, as heretofore, is used by me for accurately graduating the supply of hydrocarbon to the chamber *a* of the retort. It is provided with stop-pins *f'*, which limit the movement of the valve. Several pin-holes are arranged at intervals, so that the stop-pins may be set at various points corresponding to the minimum and maximum requirements of the apparatus from time to time.

The heating-burner B is composed of three main parts, consisting of the hollow standard *g*, the hydrocarbon-valve chamber *h* within

the standard at its base, and the jet-cap *i*, mounted upon the top of the standard. The interior of the standard, at its base, communicates with an air-induction pipe, C, provided at its entrance with a valve or gate, *k*. Within pipe C is a valve-rod, *l*, which carries at its inner end a segmental pinion, l^1, for engaging with the rack-gear l^2 on the needle-valve *m*, which co-operates with the valve-seat m^1 in the top of the valve-chamber *h*. The stems m^2 of the needle-valve are fitted to guides m^3 above and below the rack-gear, which insures a truly vertical movement of the valve toward and from its seat. The valve-chamber is connected with chamber *a* of the retort by means of pipe *h'*.

The base of the standard is enlarged to afford a capacious air-chamber; but it is contracted adjacent to the valve-chamber, which is also cylindrical, so that the air passes upward through the intervening annular space to a point above the valve-chamber, where it strikes an annular shoulder, *n*, formed by the further contraction of the standard, and is thence deflected toward the center of the standard, so as to be thoroughly mixed with the gas issuing upward from the valve-chamber.

The upper guide for the valve *m* consists of a disk freely perforated for the upward passage of the gas.

The upper end of standard *g* is provided with an external screw-thread, by which the jet-cap *i* is mounted on the standard, whereby it may be raised or lowered, if rotated, it being provided with radial arms for convenient manipulation.

The jet-cap *i* is open at its top, and is provided with an upper series of radial flame-jets, i^1, and a lower series of flame-jets, i^2, these latter being controlled by a register-valve, i^3, provided with a suitable handle, i^4. Surrounding the jet-cap and mounted thereon is a fire-pan, *o*, for the initial heating of the retort, and it is supplied with hydrocarbon from the main supply-pipe *c* by way of branch pipe *o'*, which is provided with a suitable cock.

The portion of the apparatus adapted to the generation of fixed illuminating gas, consisting of chamber *b* of the retort, the heating or gas-fixing coil *p*, and condenser *p'*, is substantially as heretofore, and constitutes no portion of my invention, it being herein shown merely to illustrate the adaptability of my apparatus to general heating purposes in conjunction with the generation of illuminating gas for domestic and other uses.

In Fig. 8 of the drawings I show a single chambered retort, A', for heating purposes only, and it is to be understood that the pipes therewith shown correspond to those previously described in connection with the supply to retort and fire-pan, and for conveying gas from the retort to the burner.

It will be seen that the burner is located beneath the retort, so that the bottom of the latter deflects the flame and heat so as to extend them over considerable area, and also that when the jet-cap is raised into contact with the retort its upper end will be closed, leaving only the upper and lower series of flame-jets for service. If the lower series of flame-jets be closed, then only the upper series will be in service, and the apparatus working with a minimum temper-

ature, the air-induction valve being so set as to produce a blue flame. The valve of the lower series being opened, the flame-jets promptly ignite from above, and the air-induction valve is still further opened to secure a blue flame from both series of jets, whereby the apparatus will be operated with a medium capacity. For higher temperature the jet-cap is lowered to such an extent as will afford a space between it and the retort, whereby a disk-shaped flame will be developed of any required thickness and diameter, its volume being governed by the pressure of gas in the retort, and, as said pressure increases in proportion to temperature, the volume of this disk-shaped flame can be increased to an almost unlimited extent. The air-induction valve should then be nicely adjusted to such a point as will result in the highest development of the blue or colorless flame. When used for domestic purposes, an entire apparatus, substantially as shown, and modified only in form and construction, so as to meet special requirements, may be placed within a set range for baking or boiling, or within a heating stove or furnace.

Having thus described my invention, I claim as new and desire to secure by letters patent—

1. In an apparatus for economically burning hydrocarbons on a large scale for attaining high temperatures, the combination, with an atmospheric burner operating on the Bunsen principle, of a retort having a radiating surface equal to or greater than the area of flame from the burner, and which operates as a complete deflector to the flame therefrom, a pipe which connects the burner with the retort, and a fire-pan below the retort for developing the initial supply of gas to the burner, substantially as described.

2. The combination, with a retort, of an open-topped atmospheric burner, operating on the Bunsen principle, connected with the retort, located below it and adjacent thereto, to enable the bottom of the retort to operate as a cap to the burner and as a deflecting-plate, substantially as described.

3. The combination, with a retort and an open-topped at-
83½ mospheric burner, operating on the Bunsen principle, mounted on a standard below the retort and connected therewith, of means for adjusting the burner with relation to the bottom of the retort, substantially as described, whereby the space intervening between burner and retort may be graduated to afford a thick or thin disk-shaped flame, as set forth.

4. The combination, with an atmospheric burner operating on the Bunsen principle, provided with two or more flame-jets or series of jets, one or more of which can be separately closed and opened, of an air-induction valve for graduating the supply of air to the burner in proportion to the number of flame-jets required, substantially as described.

5. A hydrocarbon-burner consisting of an annular shell, provided with two or more annular series of jets in different planes, in combination with a register-valve for controlling one or more of said series, substantially as described.

6. The combination, with a hydrocarbon-burner and needle-valve,

of the hand-rod, its pinion, the rack-gear on the needle-valve, and guides for said valves, substantially as described.

RANSOM F. HUMISTON.

Witnesses:
W. H. BURRIDGE.
J. H. BURRIDGE.

(Here follow diagrams marked pp. 84 & 85.)

86 And thereupon the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion of the said court, and, inasmuch as the said charge and opinion so excepted to do not appear upon the record, the counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided.

And thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this May 19th, A. D. 1882.

(Signed) WM. BUTLER, *Judge.* [SEAL.]

87 Endorsed: 54. C. C. of U. S. Oct. sess., 1880. Humiston, to use, &c., *vs.* Wood. Bill of exceptions. Filed May 19 1882.

A motion for a new trial may be made in this case, which shall not be deemed a waiver of the right to a bill of exceptions to the ruling.

Ap'l 6, '82.

WM. BUTLER.

It is agreed that the bill of exceptions shall be sealed as within *corrected*, and that a copy of plaintiff's letters patent may be attached as an exhibit as if admitted in evidence.

FRANCIS E. BREWSTER,
Of Counsel for Pl'ff.
FRANK P. PRICHARD,
Of Counsel for Def'd'ts.

88 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. October Sess., 1880.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey, to the Use of William P. Horton, a Citizen of the State of Ohio,
vs.
JAMES P. WOOD and JOSEPH WOOD, Copartners under the Firm of James P. Wood and Company, Citizens of the State of Pennsylvania.
} No. 54.

Know all men by these presents that we, Ransom F. Humiston,

of New Haven, in the State of Connecticut, and William Henry, of Camden, in the State of New Jersey, and William H. Myers, of No. 321 Washington avenue, in the city of Philadelphia, State of Pennsylvania, are held and firmly bound unto James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said James P. Wood and Joseph Wood, trading as aforesaid, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of April, A. D. 1884.

Whereas lately at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between Ransom F. Humiston, a citizen of the State of New Jersey, to the use of William P. Horton, a citizen of the State of Ohio, plaintiff, and James P. Wood and Joseph Wood, copartners under the firm of James P. Wood and Company, citizens of the State of Pennsylvania, defendant-, judgment was rendered against the said plaintiff, and the said plaintiff, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James P. Wood and Joseph
89 Wood, trading as aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Ransom F. Humiston, to the use of William P. Horton, shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good then the above obligation to be void; else to remain in full force and virtue.

RANSOM F. HUMISTON. [SEAL.]
WILLIAM HENRY. [SEAL.]
WILLIAM H. MYERS. [SEAL.]

Sealed and delivered in presence of—

H. D. HUMISTON.
SAMUEL BELL.
WOON A. WILLIAMSON.

Approved: W. McKENNAN,
Cir. Judge.

[Endorsed:] No. 54. Circuit court United States. October sess., 1880. Humiston, to use, &c., *vs.* Wood *et al.* Bond surwrit of error. Filed April 23, 1884.

90 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Ransom F. Humiston, to the use, &c., *vs.* James P. Wood *et al.* on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of these United States the one hundred and ninth.

[Seal U. S. Circuit Oourt, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania C. C. U.S. No. 83. Ransom F. Humiston, to the use of William P. Horton, plaintiff in error, *vs.* James P. Wood and Joseph Wood, copartners under the firm name of James P. Wood & Co. Filed 10th October, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 83.

Error to U. S. Circuit Court for Eastern District of Penna., 3d Circuit.

RANSOM F. HUMISTON, a Citizen of the State of New Jersey, to the Use of William P. Horton, a Citizen of the State of Ohio, Plaintiff in Error,

vs.

JAMES P. WOOD and JOSEPH WOOD, Copartners under the Firm Name of James P. Wood & Co., Citizens of the State of Pennsylvania, Defendants in Error.

Assignment of Error.

The plaintiff in error assigns the following specification of error:

I. The learned judge who tried the cause in the court below erred in instructing the jury to find a verdict for the defendants.

Wherefore the plaintiff in error, for the error above assigned, prays the Supreme Court of the United States to reverse the judgment entered by the said circuit court of the United States in and for the eastern district of Pennsylvania, for the third circuit.

FRANCIS E. BREWSTER,
DAVID W. SELLERS,
F. CARROLL BREWSTER,
Pro. Pl'ff in Error.

[Endorsed:] Supreme Court U. S. 1884, October term. No. 83. Ransom F. Humiston, &c., pl'ff in error, *vs.* James P. Wood *et al.* Assignment of error and prayer for reversal.

[Stamp:] Office Supreme Court U. S. Filed Oct. 16, 1884. James H. McKenney, clerk.

24-12

OCT 4 1887

No. 1048. October Term, 1884.

IN THE

Supreme Court of the United States.

RANSOM F. HUMISTON to the use of William P. Horton,
Plaintiff in Error and Plaintiff below,

vs.

JAMES P. WOOD and JOSEPH WOOD, copartners under the firm name of James P. Wood & Company,
Defendants in Error and Defendants below.

Brief of Plaintiff in Error.

FRANCIS E. BREWSTER,
DAVID W. SELLERS,
F. CARROLL BREWSTER,
Pro Plaintiff in Error.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

In the Supreme Court of the United States.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Ransom F. Humiston to the use of William P. Horton, Plaintiff in Error and Plaintiff Below,

vs.

James P. Wood and Joseph Wood, copartners under the firm name of James P. Wood & Company, Defendants in Error and Defendants Below.

PAPER-BOOK OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was an action of *assumpsit* brought by the plaintiff in error in the Circuit Court of the United States for the Eastern District of Pennsylvania against James P. Wood and Joseph Wood, trading as James P. Wood & Co., of Philadelphia, to recover the sum of $25,000, the consideration for the assignment to them of the sole right for the States of Pennsylvania and New Jersey in the plaintiff's patent, known as "*Humiston's atmospheric hydrocarbon apparatus*" for generating light and heat.

The plaintiff was the patentee of the apparatus, under letters patent dated June 24th, A. D. 1879, and numbered 216,853. (*Vide* letters patent, page 32 of printed record.)

The defendants were manufacturers of ranges and heaters. The patented apparatus was exhibited to them early in July, 1879, and they tried and tested it at their manufactory. Finding it to be all that was represented, and being greatly pleased with it, they negotiated with the plaintiff for the sale to them of the right in said patent for Pennsylvania and New Jersey. The price agreed upon was $20,000 for Pennsylvania and $5000 for New Jersey, making $25,000 in all.

The defendants at first desired that the assignment of said patent right for said States should be made directly to them; but thinking that it would be easier to raise the purchase-money by the formation of a stock company to be controlled by them, they requested plaintiff to assign to one of defendants as trustee. The plaintiff consented to this proposition, and in order to enable defendants to make up the necessary number required by the law of Pennsylvania, he further consented to the use of his name as one of the corporators. The defendants prepared the assignment of the patent right for the two States above mentioned to Joseph Wood, one of their firm, as trustee. This was executed by the plaintiff upon September 30th, 1879. (*Vide* assignment, pages 22 and 23 of printed record.) An agreement, dated July 31st, 1879, had been previously executed for the formation of a corporation under the act of Assembly of the State of Pennsylvania of April 29th, 1874, under the name of The American Light and Heat Company of Philadelphia, for the manufacture and sale of said patented apparatus, &c. (*Vide* pages 20 and 21 of printed record.)

The agreement stipulated that the capital stock of the corporation should be $200,000, and that the plaintiff should assign to the other parties "the sole right of the improvement "in apparatus for burning hydrocarbons for the States of Penn-"sylvania and New Jersey," under Letters Patent No. 216,853, dated June 24th, 1879, for which he should "receive from the "*concern or association or corporation*" the sum of $25,000, to be paid to him as follows: $5000 within thirty days; $5000 further in sixty days; $5000 further in ninety days; $5000 further in one hundred and twenty days; and the balance, $5000, in one hundred and fifty days from date of agreement.

The plaintiff and others signed this agreement at the request of the defendants, because five names were required to form the corporation. (*Vide* testimony of R. F. Humiston, page 15 of printed record.)

"The substance of what was said by defendants was that "we will be the owners of the patent; but it is necessary to "have certain names to an application for a charter, and "myself, Myers, and Feltwell consented to go on application "articles."

As $5000 would fall due in thirty days and defendants feared that they might not be able to raise the amount in that time, they asked the plaintiff to agree to extend the period for payment ten, twenty, or thirty days. This he consented to do. In the extension agreement, defendants artfully introduced a clause which discharged them from all liability. Plaintiff signed it in that contradictory shape. (Printed record, page 22.) Thus, while defendants in this document are discharged, they are by the same writing distinctly held to the payment at the extended time. Upon this bungling exoneration they relied, and at the trial escaped. The paper as a whole is no release.

But it was subsequently discovered that the law of Pennsylvania required the payment in cash of ten per centum of the capital stock, and the intended application for incorporation was therefore abandoned, and long after the date of the paper of July 31st, 1879, to wit, in November, 1879, when all idea of a corporation in Pennsylvania or New Jersey was thrown away, defendants distinctly agreed with plaintiff to take the patent themselves at the same price. (*Vide* testimony of R. F. Humiston, page 15 of printed record.)

This was a start *de novo*—wiping out all past agreements.

When the agreement to sell to defendants was made, but before the writings were executed, the defendants paid plaintiff $100, taking his due-bill. They subsequently paid him, from time to time, $516 in addition, up to July, 1880, when the last payment was made. When plaintiff afterwards demanded payment, they said they were short of funds, and had men to pay off, &c. (*Vide* testimony of R. F. Humiston, pages 16 and 17 of printed record.)

The defendants were manufacturers of ranges and heaters. The patented apparatus was exhibited to them early in July, 1879, and they tried and tested it at their manufactory. Finding it to be all that was represented, and being greatly pleased with it, they negotiated with the plaintiff for the sale to them of the right in said patent for Pennsylvania and New Jersey. The price agreed upon was $20,000 for Pennsylvania and $5000 for New Jersey, making $25,000 in all.

The defendants at first desired that the assignment of said patent right for said States should be made directly to them; but thinking that it would be easier to raise the purchase-money by the formation of a stock company to be controlled by them, they requested plaintiff to assign to one of defendants as trustee. The plaintiff consented to this proposition, and in order to enable defendants to make up the necessary number required by the law of Pennsylvania, he further consented to the use of his name as one of the corporators. The defendants prepared the assignment of the patent right for the two States above mentioned to Joseph Wood, one of their firm, as trustee. This was executed by the plaintiff upon September 30th, 1879. (*Vide* assignment, pages 22 and 23 of printed record.) An agreement, dated July 31st, 1879, had been previously executed for the formation of a corporation under the act of Assembly of the State of Pennsylvania of April 29th, 1874, under the name of The American Light and Heat Company of Philadelphia, for the manufacture and sale of said patented apparatus, &c. (*Vide* pages 20 and 21 of printed record.)

The agreement stipulated that the capital stock of the corporation should be $200,000, and that the plaintiff should assign to the other parties "the sole right of the improvement "in apparatus for burning hydrocarbons for the States of Penn-"sylvania and New Jersey," under Letters Patent No. 216,853, dated June 24th, 1879, for which he should "receive from the "*concern or association or corporation*" the sum of $25,000, to be paid to him as follows: $5000 within thirty days; $5000 further in sixty days; $5000 further in ninety days; $5000 further in one hundred and twenty days; and the balance, $5000, in one hundred and fifty days from date of agreement.

The plaintiff and others signed this agreement at the request of the defendants, because five names were required to form the corporation. (*Vide* testimony of R. F. Humiston, page 15 of printed record.)

"The substance of what was said by defendants was that "we will be the owners of the patent; but it is necessary to "have certain names to an application for a charter, and "myself, Myers, and Feltwell consented to go on application "articles."

As $5000 would fall due in thirty days and defendants feared that they might not be able to raise the amount in that time, they asked the plaintiff to agree to extend the period for payment ten, twenty, or thirty days. This he consented to do. In the extension agreement, defendants artfully introduced a clause which discharged them from all liability. Plaintiff signed it in that contradictory shape. (Printed record, page 22.) Thus, while defendants in this document are discharged, they are by the same writing distinctly held to the payment at the extended time. Upon this bungling exoneration they relied, and at the trial escaped. The paper as a whole is no release.

But it was subsequently discovered that the law of Pennsylvania required the payment in cash of ten per centum of the capital stock, and the intended application for incorporation was therefore abandoned, and long after the date of the paper of July 31st, 1879, to wit, in November, 1879, when all idea of a corporation in Pennsylvania or New Jersey was thrown away, defendants distinctly agreed with plaintiff to take the patent themselves at the same price. (*Vide* testimony of R. F. Humiston, page 15 of printed record.)

This was a start *de novo*—wiping out all past agreements.

When the agreement to sell to defendants was made, but before the writings were executed, the defendants paid plaintiff $100, taking his due-bill. They subsequently paid him, from time to time, $516 in addition, up to July, 1880, when the last payment was made. When plaintiff afterwards demanded payment, they said they were short of funds, and had men to pay off, &c. (*Vide* testimony of R. F. Humiston, pages 16 and 17 of printed record.)

Upon the trial of the cause, the facts as above stated were proved to the jury, and the court thereupon instructed the jury to find a verdict for the defendants. (*Vide* page 20 of printed record.)

THE FOLLOWING IS AN ABSTRACT OF THE PLEADINGS.

The *narr.* was in *assumpsit* (*vide* page 3 of printed record), and contains three special counts and the common counts.

The first count averred that the plaintiff was the patentee of the aforesaid apparatus under letters patent dated June 24th, 1879, No. 216,853, and that he had exhibited the same to defendants, who were anxious to purchase from him an assignment of said patent for the States of Pennsylvania and New Jersey, and on July 26th, 1879, promised and agreed with the plaintiff that if he would transfer and assign the sole right of the States of Pennsylvania and New Jersey in said patent, the defendants would pay him the sum of $25,000, and plaintiff then and there accepted said promise and agreed to assign said patent right for the States of Pennsylvania and New Jersey. And defendants, at first desiring the assignment to be made in their own names, but subsequently desiring the assignment to be made to a corporation, caused to be prepared an assignment to Joseph Wood, one of defendants, as trustee of defendants and of William H. Myers and B. M. Feltwell and of the plaintiff, and defendants requested plaintiff to be one of five persons, being the number necessary to create a corporation, said defendants then preferring that the patent right should be held by a corporation to be formed under the act of Assembly of the Commonwealth of Pennsylvania, under the name of the American Light and Heat Company of Philadelphia, the purpose of which was to be the manufacture and sale of said plaintiff's apparatus, &c.; and thereupon defendants, in order to carry out their last design, caused to be prepared an agreement whereby said defendants and B. M. Feltwell and William H. Myers and plaintiff were to form a corporation under the name and for the purpose aforesaid, and whereby the plaintiff was to assign the sole patent right for the

States of Pennsylvania and New Jersey for $25,000, and an article of association between said defendants, said Feltwell, said Myers, and said plaintiff, whereby in pursuance of said act of Assembly they were to associate themselves together as a body politic, and said defendants requested plaintiff to execute the same, which he then and there did.

That under said first agreement made by plaintiff and said defendants, plaintiff, on September 30th, 1879, at defendants' special instance and request, executed to Joseph Wood, one of the defendants, as trustee for said association, an assignment of the patent right aforesaid for Pennsylvania and New Jersey, which defendants accepted, and promised and agreed to pay therefor the sum of $25,000.

And after the execution of said agreement, articles of association, and assignment by plaintiff, defendants abandoned the application for incorporation and declared that they held the sole patent right for said States, as originally agreed upon by them and said plaintiff; and although plaintiff has always performed and fulfilled said agreement, and although plaintiff did assign, as requested by defendants, the sole patent right for said States, yet defendants did not comply with their said agreement, and did not pay said sum of $25,000, although often requested.

The second count (*vide* page 5 of printed record) averred that on September 30th, 1879, the defendants promised the plaintiff to pay him $25,000, in equal monthly installments of $5000, if the plaintiff would execute an assignment in such form as defendants should request, of the sole right for Pennsylvania and New Jersey of said patented apparatus; and, relying upon the said last-mentioned agreement of defendants, and in pursuance thereof, the plaintiff did execute an assignment in the form defendants requested, of the sole right for Pennsylvania and New Jersey of said patent, and delivered the same to defendants, who accepted the same; and although the plaintiff well and truly performed his said agreement, said defendants did not pay said $25,000, in equal monthly installments of $5000, although often requested, but refused so to do, and therein failed and made default, contrary to their said promise.

The third count (*vide* page 6 of printed record) averred that on September 30th, 1880, the defendants were justly indebted to the plaintiff in the sum of $25,000, being the price agreed by defendants to be paid by them to plaintiff for a certain assignment theretofore executed by plaintiff at the special instance and request of defendants of the sole right for Pennsylvania and New Jersey of a certain patent for burning hydrocarbons, dated June 24th, 1879, and being so indebted, defendants in consideration thereof afterwards on the day and year last aforesaid promised and agreed with plaintiff to pay him said sum of $25,000 on demand. Yet defendants, although often requested, have not paid same to plaintiff. Common counts and breach (*vide* pages 6–7 of printed record).

Pleas filed February 1st, 1881 (*vide* page 8 of printed record).

1. *Non assumpsit.*

2. That at time of making of agreement in declaration mentioned, plaintiff represented that said patented apparatus was a useful and valuable invention and fit for the purpose for which it was designed and for which plaintiff knew it was to be used, to wit, the generation of heat and light, which representations were a part of the consideration for the alleged promises of defendants. That said representations were untrue, and said apparatus was not useful nor valuable, nor was the same fit for purposes for which it was designed.

3. That said apparatus was not a useful and valuable invention, and was not fit for the purposes for which it was designed and for the uses for which it was intended to be put by defendants and for which it was sold to them by plaintiff, but was wholly unfit for said uses, and was entirely worthless and valueless, and known to be so by plaintiff at the time of making said agreement.

First Additional Plea, filed September 29th, 1881 (*vide* page 10 of printed record).—Defendants did not promise plaintiff that if he would assign the sole right of Pennsylvania and New Jersey in said patent they would pay him therefor the sum of $25,000.

Second Additional Plea, filed September 29th, 1881 (*vide* page 10 of printed record).—Defendants did not promise plaintiff to pay him $25,000, in equal monthly installments of $5000 each month, as in plaintiff's declaration set forth.

Third Additional Plea, filed September 30th, 1881 (*vide* page 11 of printed record).—That on July 31st, 1879, when the article of association was executed, plaintiff by a certain deed-poll on that day executed, did declare that he would not hold said James P. Wood, Joseph Wood, Benjamin M. Feltwell, and William H. Myers personally responsible for the payment of said $25,000 in the article of association mentioned, but would look to them only as trustees for the sale of the stock of the company.

Fourth Additional Plea, filed March 27th, 1882 (*vide* page 12 of printed record).—Payment with leave, &c.

Replication to First Plea, filed February 5th, 1881 (*vide* page 9 of printed record).—*Similiter* and issue.

Replication to Second Plea, filed February 5th, 1881.—The representations mentioned in said plea were true and said apparatus was useful and valuable, and was fit for the purpose for which it was designed.

Replication to Third Plea, filed February 5th, 1881.—The said apparatus was and is a useful and valuable invention, and was and is fit for the purposes for which it was designed, and for the uses for which it was intended to be put by defendants, and for which it was sold to them by plaintiff.

Replication to First and Second Additional Pleas, filed March 31st, 1882 (*vide* page 12 of printed record).—*Similiter* and issue.

Replication to Third Additional Plea, filed March 31st, 1882.—That after execution of deed-poll in said plea mentioned, to wit, on September 30th, 1879, defendants promised plaintiff that if he would agree the association provided for should not be constituted, they would pay him said sum of $25,000 in the manner and form and for the patent right in the second count of the declaration mentioned, and which said agreement plaintiff then and there made, and hitherto said association has not been constituted.

Replication to Fourth Additional Plea of Payment, filed March 31st, 1882 (*vide* page 12 of printed record).—*Non solvit* and issue.

SPECIFICATION OF ERROR.

1. The learned judge who tried the cause in the court below erred in instructing the jury to find a verdict for the defendants.

Wherefore the plaintiff in error, for the error above assigned, prays the Supreme Court of the United States to reverse the judgment entered by the said Circuit Court of the United States in and for the Eastern District of Pennsylvania, for the Third Circuit.

ARGUMENT.

The record is barren of any reason for the binding instruction given by the court to find for the defendants.

The plaintiff having closed, the learned counsel for the defendants moved for a nonsuit. This is a practice well understood as permitting a plaintiff to supply any item of evidence which may have been overlooked. But in this instance the court did not grant the motion for a nonsuit, and gave a direction to the jury which was not asked by the defendants. Without point, reason, or opinion as guide, it is to be presumed that the court regarded the plaintiff's evidence as entirely insufficient and gave a binding direction precisely as they would have entered a judgment for the defendant upon a demurrer to the evidence.

Treating the case in this aspect the solitary question for discussion is, was or was not the plaintiff entitled to go to the jury?

The following matters stand in the proofs without the possibility of impeachment:—

I. The plaintiff was the owner on July 30th, 1879, of a patent.

II. The defendants regarded it as worth, for the States of Pennsylvania and New Jersey, $25,000, and secured from plaintiff an assignment for said States, upon the promise to pay that sum. So reads the paper of July 31st, 1879. (Page 21, printed record.)

"The said party of the fifth part (the plaintiff) *shall* receive "from the concern or association or corporation for said patent "rights for said States the sum of $25,000, to be paid to him "as follows: $5000 within thirty days, $5000 in sixty days, "$5000 in ninety days, $5000 in one hundred and twenty days, "and the balance, $5000, in one hundred and fifty days."

III. That the defendants regarded themselves as the persons meant by the words "concern or association" who were to pay the plaintiff, is clearly evident from the fact that they procured a second paper to be drawn on the same date, which they introduced on cross-examination, and which appears at page 22, printed record. In this they expressly recite that whereas "they agreed to pay plaintiff, for all his interest for the States "of Pennsylvania and New Jersey, the sum of $25,000, to be "raised from sales of the stock," &c.

Then come the words upon which it is presumed the learned judge based his instruction:

"I (plaintiff) will not hold them personally responsible for "the payment of said $25,000, but will look to them only as "trustees for the sale of the stock of said company, and the "payment to me of such moneys as may be received for such "sales until the whole is paid; *and I further agree* that if suf- "ficient money be not received to pay the first installment of "$5000 when it becomes due, that I will extend the time for "payment, ten, twenty, or thirty days, as may be necessary."

Here are two conflicting and contradictory clauses. By the first defendants are discharged except for the payment of moneys received. By the second they are liable, but the time for payment is extended at most thirty days.

Could defendants then abandon the sale of the stock, bar up the possibility of receiving one dollar from shares, yet keep the plaintiff's patent, and never pay the consideration save to the extent of $366?

IV. That the defendants are liable to the plaintiff for the consideration, notwithstanding this contradictory paper, is as clear as it is possible to establish indebtedness by a party's own acts and declarations.

(*a.*) "James P. Wood asked me if I was particular about "forming a stock company, and I said, no; and he said, would "you *as leave sell it to the firm; I said I would rather.* He said, "Name your price for Pennsylvania. I said $20,000. James "said that was reasonable, and he said he would consult his "brother Joseph about it. He did so, and Joseph approved, "with one exception. He asked me if I could take $5000 "down and $5000 monthly, instead of cash down. I said I "would. They had some conversation in regard to raising the "money. After a little talk James said it would be easier for "them to form a stock company to raise the money. I spoke "about attorney. After a talk, Mr. Waxler was suggested, and "we went to his office, and then adjourned to go to Mr. Myers' "office. After giving notes as to how it was to be drawn up, "Mr. James Wood said *they wanted New Jersey as well as Penn-* "*sylvania, and what will you take* for New Jersey? I said "$5000. James said, on the same terms? I said, yes; and "Joseph then said he would approve of it. This was July 31st, "1879."

"The substance of what was said by defendants was that "*we* will be the owners of the patent, but it is necessary to "have certain names to an application for a charter, and we, "myself, Myers, and Feltwell consented to go on application "articles." (Page 15, record.)

(*b.*) After all these papers were executed, "we abandoned "the idea of obtaining the charter in Pennsylvania. I suppose "the stock company or the charter members abandoned it. A "meeting was held in defendants' office October 7th, I think, "and difficulties of obtaining a charter in Pennsylvania were "discussed. James P. Wood and Mr. Myers were appointed "a committee to ascertain the laws of New Jersey relative to "corporations in that State. They were to report to a subse- "quent meeting on November 3d. I spoke to Joseph Wood, "asked him when the committee would report, and Joseph said

"to me, *If you are perfectly satisfied, we don't care about the com-*
"*pany*, WE will take the ownership ourselves on the same terms
"(I mean as to price and payment). I cannot give the exact
"language; the substance was that James and Joseph Wood
"would take the patent on the same terms as the company had.
"Defendants continued to receive offers for territory. *Joseph*
"*Wood stated to me that he had received an offer* for the county
"in which Newark was of $10,000, and asked me, What do you
"think of it? and I said I would take it, as it was twice as
"much as he had given for the whole State. He said it was no
"one's business what they had given for it. He said Jersey
"City was in it. It is worth $40,000. Joseph said that parties
"in Pennsylvania were proposing to buy the State west of the
"Allegheny Mountains, and talked of $25,000 for about one-
"third of the State. He said it was worth more. I said it was
"his business and not mine. I wanted my pay."

(*c.*) After all these papers the defendants held themselves out as owners and so acted. A Mr. Moran thought the apparatus would do for burning brick. "He called at the defend-
"ants' office and a writing was signed between James P. Wood
"and Moran as one party, and a Mr. Carr as the other party.
"I told Mr. Wood that Moran had brought an article to me to
"be signed, and I stated that I was not the owner, but that they
"were, and then the agreement was signed. When I told James
"Wood this, he said to Moran, Draw up the contract and I will
"look it over." (Page 16 of record.) The defendants are told that they are the "owners," and they do not deny this; but proceed as owners to deal with Mr. Moran.

(*d.*) Defendants sent plaintiff to sell for them.

"The annual State Fair of Pennsylvania occurred in Sep-
"tember, 1879. James Wood said it would be a good thing to
"put this on exhibition. I said it would, and that he was inter-
"ested in New Jersey and Pennsylvania and I in the rest of the
"United States, and that if he would put up the apparatus there
"I would give my time—show it off. James Wood there dis-
"tributed many circulars about it, and I did the same. I have
"some of the circulars. James Wood requested me to go out
"and see about introducing it into the brick-kiln at Moran's,

"and I went out there. The weather was not pleasant. Before "that came Joseph induced me to go to West Pennsylvania to "make sales and to sell for cash for $25,000, and if I could not "get that to take $20,000, but under no circumstances to take "less than $10,000."

(*e.*) Plaintiff demands and receives from defendants $366 on account of this very claim.

"In March, 1880, I called on defendants for some money, "and they handed me $200. I told them I needed money; I "think $200 was the amount; defendants had paid me $640 on "account of purchase-money; the last payment in June or July, "1880, of forty dollars. Defendants said they could not pay it "then; this was in June, 1880. They gave no reason at that "time. At a subsequent time, late in June, they called to see "me, and said the reason they could not pay me was because "there had been a great deal of competition in their business, "and they had made nothing in two or three years, but that "they had some contracts which were better, and if I would "not press them they would pay me from time to time."

No wonder then that "the plaintiff understood that under "this agreement they would be personally liable." (Page 18 of record.)

(*f.*) Nor is this proof of defendants' liability derived alone from the plaintiff's testimony. William H. Myers swears "The charter did not go through." He gives the particulars. Then a proposed purchaser presents himself. The defendants again admit that they are the owners and that they owe plaintiff. This was long after the date of the paper on which they now intrench themselves. Mr. Myers swears: "In December, "1879, a gentleman, Mr. Frank Woods, called on me about a "purchase of West Pennsylvania. I saw Joseph Wood, and he "said it might be a good thing; might be sold, probably, for "sufficient to pay for the patent. During the conversation we "spoke of the difficulty of raising the company. Joseph said "they had thought something of taking it themselves, and of "abandoning the company; they thought territory sufficient "*might be sold to pay Humiston.*" * * * "When they said "they thought of abandoning the company, defendants

"*employed me to make sale, and they said they would give me a* "*commission, $5000* if $25,000 realized, or a less sum a propor- "tionate commission. This was about 10th of December, 1879. "I think there was something said of it before." * * *

"No corporation was ever formed."

(*g.*) The defendants secured the attendance of some experts at their office, tested the apparatus and secured a flattering certificate. (Page 27 of record.)

(*h.*) They published—long after the paper they now rely on —a complimentary certificate in favor of the patent, and declared that they had "*adopted it.*"

"Professor Humiston's apparatus has been in successful "operation in our range and heaters for the last two months, "there has never been the slightest accident or delay through "any clogging or defect whatever. This apparatus has more "than vindicated the claims of the patentee, evolving more heat "and light from the material consumed than was claimed by "the inventor. *We have adopted it.*

"JAMES P. WOOD & CO.,
"No. 41 South Fourth street, Phila.

"PHILA., September 9th, 1879."

How could they lawfully adopt another man's patent, unless they bought a license or an assignment?

They repeat all this at still greater length (page 29, record), declaring their most entire satisfaction, and concluding their advertisement with the words:

"As the best guarantee of our confidence in the invention, "we take pleasure in stating *that we have ourselves adopted it.*"

"JAMES P. WOOD & CO."

(*i.*) Then comes a correspondence with the defendants. The paper they rely on is dated July 31st, 1879. Plaintiff writes to them February 12th, 1880, telling them of a man "who wanted to know if I had yet sold the right to use my "apparatus for railroad purposes in any of the States. I told "him that I had sold the right for all purposes for Pennsylvania "and New Jersey. He told me that I had made a great mis- "take, for that sale almost shut out New York City from her

" most important outlets. I told him that I felt confident that " I could buy back the right for railroad purposes for those " States at a reasonable figure; now, I feel confident that this " man means business, and he is known to be connected with a " wealthy corporation, and I believe that *if you will authorize* " *me to sell just so much of the right as is applicable to railroad* " *purposes alone for Pennsylvania and New Jersey*, that I can do " it within thirty days from this date and bring you money " enough *to pay me off*, and still you will own the right for the " above-named States for all purposes except for use on rail- " roads. Now, I want you to name your lowest price for sixty " days, I mean that you shall give the refusal for sixty days at " the price you name, selling only the railroad right." * * * " Give me your minimum price."

Now, if the defendants had never bought,—if the patent was still plaintiff's property,—why did not defendants at once reply to that effect? The corporation scheme had been abandoned. They held the assignment to their own trustee. If they meant to stand upon the ground that they were not liable because they were not owners, it was easy to say so to the plaintiff. In place of this, they write:—

" PHILADA., Feb. 13th, 1880.

" *Prof. R. F. Humiston,*

" DEAR SIR:—Yours of yesterday received. We are " pleased to learn of your prospective success with R. roads.

" With reference to price for OUR *interest in Penna. and N. J.* " for R. R. purposes, we leave it entirely with you to make " such arrangements as you may deem best for the interest " of all concerned."

With such a mass of testimony as this, is it possible that a judge can say, as matter of law, that there is no evidence for the consideration of a jury? The defendants are here as on a demurrer; they admit the absolute truth of all that is averred; they concede every inference which may justly be drawn from these facts; with full liberty to take the stand and prove if they can that they owe nothing, they fold their

hands and stand upon the defense that they have got this plaintiff's patent—can keep it—delude him into signing papers, cajole him with small payments, hold and use his assignment, yet never pay for it.

Etting vs. *Bank of the United States, 11 Wheaton, 59 (1826).*
Opinion by Mr. Chief Justice Marshall:—

"Although it is the province of the court to construe writ-"ten instruments, yet, where the effect of such instrument de-"pends, not merely on the construction and meaning of the "instrument, but upon collateral facts *in pais*, and extrinsic cir-"cumstances, the inferences of fact to be drawn from them are "to be left to the jury."

Phœnix Insurance Co. vs. *Doster, 106 U. S. Rep., 30 (1882).*

Writ of error to the Circuit Court of the United States for the District of Kansas.

At the close of the plaintiff's evidence, defendant moved for a peremptory instruction to the jury to find for the company. This was refused, and the defendant took a writ of error.

Mr. Justice Harlan:—

"The motion, at the close of the plaintiff's evidence, for a "peremptory instruction for the company was properly denied. "It could not have been allowed without usurpation, upon the "part of the court, of the functions of the jury. Where a cause "fairly depends upon the effect or weight of testimony, it is "one for the consideration and determination of the jury, under "proper directions as to the principles of law involved. *It "should never be withdrawn from them, unless the testimony be of "such a conclusive character as to compel the court,* in the exercise "of a sound judicial discretion, to set aside a verdict returned "in opposition to it."

Keyes vs. *Grant, 118 U. S. Rep., 25 (1885).*
Opinion by Mr. Justice Matthews.

Error to the Circuit Court of the United States for the District of Colorado.

This was a suit at law to recover damages for the infringement of letters patent.

After the evidence on both sides had been given, the court directed a verdict for defendants, which direction was assigned as error.

This court reversed on the ground that when the defendant in a suit for the infringement of a patent sets up a prior publication of a machine anticipating the patented invention, and it appears that there are obvious differences between the two machines in the arrangements of the separate parts, in the relation of the parts to each other, and in their connection with each other in performing the functions for which the machine is intended, and experts differ upon the questions whether these differences are material to the result, and whether they required the faculty of invention, those questions are questions of fact to be left to the determination of the jury, under proper instructions from the court.

Fehl vs. *Good*, *2 Binney* (*Pa.*), *495* (*1810*). *Tilghman, C. J.*

Though a verdict be against the opinion of the judge who tried the cause, yet if it turned upon the credit of witnesses, a new trial will not be granted except in extraordinary cases.

McGee vs. *Bank*, *5 Watts* (*Pa.*), *32* (*1836*).

The interpretation of a paper as to its legal effect belongs to the court, but as evidence of a fact it belongs to the jury. Hence, the facts stated in a protest by a notary public are, like any other evidence, to be interpreted by the jury.

Gardner vs. *Clark*, *17 Barbour* (*Supreme Court of New York*), *538* (*1854*). *Bacon, J.*

As a general rule, the construction of a contract is a matter to be determined by the court, and not by the jury; but this is to be taken with the qualification that the entire contract is in writing, needing nothing but an interpretation of its language, or by its own intrinsic light; or that, being by parol, there is no contrariety or antagonism in the evidence by which the contract is sought to be established. Although it is generally the province of the court to construe contracts, yet when

the meaning is to be judged of by facts *aliunde*, in connection with the written language, very much must be left to the jury.

The principles enunciated in the above cases are:—

1. That all questions of fact are exclusively within the province of the jury.

2. That where the effect of written instruments depends not merely on the construction and meaning of the instrument, but upon collateral facts and extrinsic circumstances, the inferences of fact to be drawn from them are to be left to the jury.

3. That the construction by the court of a written contract, the meaning of which is to be judged of by facts *aliunde*, in connection with the written instrument, is a usurpation upon the part of the court of the functions of the jury.

4. That where any evidence tends to prove a fact it must be submitted to the jury.

These principles of law are too well established to require further elaboration; they are followed and affirmed in the following cases:—

Chichester vs. *Whitelcather*, *51 Illinois*, *259* (*1869*);
Kane vs. *Larned*, *117 Mass.*, *190* (*1875*);
Bank vs. *Dana*, *79 New York*, *108* (*1879*);
Conover vs. *Inhabitants*, *42 N. J. Law*, *382* (*1880*);
R. R. Co. vs. *Perry*, *37 Ark.*, *164* (*1881*);
Demill vs. *Moffat*, *45 Mich.*, *410* (*1881*);
Taylor vs. *McNutt*, *58 Texas*, *71* (*1882*);
Parker vs. *Middleton*, *65 Iowa*, *200* (*1884*);
Cunningham vs. *Bank*, *138 Mass.*, *480* (*1885*).

FRANCIS E. BREWSTER,
DAVID W. SELLERS,
F. CARROLL BREWSTER,
Pro Plaintiff in Error.

No. 83. October Term, 1887.

IN THE

Supreme Court of the United States.

RANSOM F. HUMISTON to the use, &c.,

vs.

JAMES P. WOOD and JOSEPH WOOD, trading, &c.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Brief of Defendants in Error.

A. H. WINTERSTEEN,
WAYNE MACVEAGH,
For Defendants in Error.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

Supreme Court of the United States.

Ransom F. Humiston

vs.

James P. Wood et al.

October Term, 1887.
No. 84.

STATEMENT OF THE CASE.

The action was *assumpsit* upon an alleged parol agreement by James P. Wood & Co. to pay plaintiff $25,000 for a territorial right to a patent.

But two witnesses were called on behalf of the plaintiff, viz., the plaintiff himself and William H. Myers.

The plaintiff's testimony, as brought out by his examination and cross-examination, was that in 1878 he had been agent in Cleveland, Ohio, for a patent oil-burning apparatus owned by one Holland, and had organized a stock company there, of which he was one of the directors, but which never went into operation. (Record, page 17.) That in June, 1879, he patented an invention of his own for the same purpose, known as Humiston's Atmospheric Hydrocarbon Light and Heat Generator, and came to Philadelphia to exhibit his apparatus. (Record, pages 14 to 17.) That he was introduced to the defendants, Joseph and James P. Wood, who were partners, trading as James P. Wood & Co., who allowed the apparatus to be tried in their store. That after trial they asked him what he proposed to do with it, to which he replied that he was going to sell it. That they then asked him how he proposed to sell it, to which he replied that he had had no experience, but understood that the usual way was to form a stock company. That James Wood asked if he was particular

about forming a stock company, and he said no; but that he would as leave sell it to James P. Wood & Co. That they then asked him the price, which he named. That they had some conversation about raising the money, and decided that the easiest way was to form a stock company. That all the parties then went to see an attorney. That it was suggested that it would require five persons to form a company, and Mr. Feltwell, who was James P. Wood & Co.'s superintendent, and William H. Myers, who was a friend of plaintiff, agreed to go into it to make up the number. That a written agreement was then drawn up between these five persons (pages 14 and 15). This agreement was produced, and is printed in Record, page 20.

It was an agreement of the five individuals, viz.: The plaintiff, the two Woods, Feltwell, and Myers to organize a stock company for the manufacture and sale of plaintiff's apparatus in Pennsylvania and New Jersey. It provided that Humiston should transfer to the other parties the territorial right to the patent and should receive from the "Concern, or Association, "or Corporation" $25,000 therefor in certain installments. It further provided that each party should use his best endeavors to sell the stock, and that Joseph Wood should be the treasurer. It also provided that the terms of this agreement should cease "*immediately after the organization aforesaid.*" Joseph and James P. Wood *were named in this agreement as individuals, the name of the firm nowhere appearing.* Plaintiff further testified that *Joseph Wood objected to signing this paper* on the ground that *it might impose some personal liability on the signers* for the payment of the price of the patent, and that thereupon another paper was drawn and executed contemporaneously with the first (page 18).

This paper was produced and is printed in the Record, page 22. It is a deed-poll under the hand and seal of Humiston, reciting the above agreement, and agreeing that the parties thereto *shall not be personally responsible for the price of the patent, but that he would look to them only as trustees for the sale of the stock of the company and the payment to him of the price out of the proceeds.* This paper and the other were executed

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 111.

EMORY E. NORTON, ASSIGNEE IN BANKRUPTCY OF GOVY HOOD, APPELLANT,

vs.

GOVY HOOD, JOHN ASBERRY, AND H. GIBBS MORGAN AND GEORGE MATHER, EXECUTORS OF HENRY FRELLSEN, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from district court	1	1
Bill of complaint	1	1
Supplemental bill	7	7
Order on bills	9	9
Order *pro confesso*	10	10
Order setting aside default of H. Frellsen	10	10
Demurrer, pleas, and answer of H. Frellsen	10	11
Replication	17	18
Proceedings in the matter of Govy Hood, bankrupt	18	18
List of creditors who have proven their debts, &c.	18	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 26, 1887.

	Original.	Print.
Schedule B—Statement of estate	18	19
A—Statement of debts	23	21
Exhibit B to bill—Record of Hood *vs.* Frellsen, State court	27	25
Petition	27	25
Amended petition	34	27
Second amended petition	43	30
Answer	44	30
Amended answer	45	31
Answers to amended petition	47	31
Judgment	50	32
Counter-letter	56	36
Account current	58	37
Letter of Frellsen to Allen, December 4, 1869	58	38
Letter of Frellsen to Hood, December 4, 1869	59	39
Agreement between Frellsen and Dean and Pierce, August 25, 1868	60	39
Exhibit C to bill—Opinion and decree of supreme court of Louisiana in Hood *vs.* Frellsen	61	40
Defendants' Exhibit A—Record of Frellsen *vs.* Hood, State court	80	44
Petition	80	44
Confession	83	45
Judgment	85	46
Notes	88	47
Fi. fa	91	48
Sheriff's deed	96	49
Fi. fa	102	51
Defendants' Exhibit B—Counter-letter (not set out—see page 56)	106	52
C—Conveyance from Frellsen to Hood, May 1, 1871	106	52
Evidence for complainant	116	55
Document D—Letter of Frellsen to Sparrow, July 8, 1868	118	56
E—Letter of Frellsen to Sparrow, August 10, 1868	122	57
G—Letter of Sparrow and Montgomery to Pierce and Dean, September 1, 1868	124	58
Deposition of Govy Hood	130	60
Exhibits A and B (not set out)	168	72
Exhibit C—Letter of Frellsen to Alling, December 2, 1869	169	73
D—Act of partition between Frellsen and Wilson's heirs	170	73
E—Account of Hood with Sparrow and Montgomery	177	76
F—Receipt of Sparrow and Montgomery to Hood, January 31, 1868	178	76
G—Letter of Sparrow to Hood, September 3, 1868	178	76
H—Agreement between Frellsen and Hood, October 26, 1868	179	77
I—Letter of Sparrow to Hood, October 21, 1868	184	78
Tax receipts	184	79
J—(not set out)	192	85
Record of Frellsen *et al. vs.* Wilson	193	86

	Original.	Print.
Deposition of E. E. Norton	201	89
E. H. Farrar	252	106
Evidence for defendants	260	108
Deposition of Henry Frellsen	260	108
Edward Sparrow	305	125
Affidavit of H. G. Morgan	338	133
Wm. Grant	345	136
Wm. R. C. Lyons	347	137
Hearing and continuance	363	142
List of evidence, &c.	363	142
Hearing and submission	364	143
Decree	364	143
Appeal to circuit court	365	144
Decree	366	144
Motion and order for appeal	367	145
Bond	368	145
Certificate to record	371	146
Citations	372	147

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

E. E. NORTON, Assignee,
versus
GOVY HOOD *et al.*
No. 9551.

E. H. Farrar and J. D. Rouse, Esqrs., solicitors for complainant, appellant; John A. Campbell and H. G. Morgan, Esqrs., solicitors for defendants, appellees.

Transcript of appeal returnable to the Supreme Court of the United States, at the city of Washington, the second Monday of October, A. D. 1884.

1 *Bill of Complaint. Filed July* 10, 1879.

To the Honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

Emery E. Norton, of the State of Louisiana and city of New Orleans, in his capacity as assignee of the bankrupt, Govy Hood, by virtue of the appointment of this honorable court, on the 24th day of February, 1869, in proceedings No. 888 of the docket of said court, brings this his bill of complaint against Govy Hood, of the parish of East Carroll, State of Louisiana; John Asberry, of said parish and State, and Henry Frellsen, of the city of New Orleans and State of Louisiana, all being residents and citizens of said State.

And thereupon your orator complains and says—

That on the 29th day of December, 1868, Govy Hood, then and now residing in the State of Louisiana, parish of East Carroll, presented to this honorable court his petition under the act of Congress of March 2d, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and asked to be declared a bankrupt under the provisions of said act; that on January 26, 1869, he was so declared a bankrupt; that on the 24th day of February, 1869, your orator was appointed and confirmed as assignee of said bankrupt's estate, and has continued to act as and remain such assignee down to this time, and is still such assignee; that as such assignee an assignment in due form of law was made to him on the 25th day of February, 1869, by the register in bankruptcy (to whom reference had been made in the matter), of all the estate, real and personal, of the said Govy Hood, including all the property of whatever kind of which he was possessed or in which he was interested or entitled to have on the 29th day of December, 1868, and all his deeds, books, and papers relating thereto; that on the — day of November, 1869, said Hood presented his petition for discharge and was duly discharged by judgment of this honorable court, rendered

and signed on January 27th, 1871; all of which will more
2 fully appear by a copy of the proceedings in said matters, No. 888, hereto annexed and made part of this bill and marked Exhibit "A."

Your orator avers that in January, 1866, Govy Hood was the owner of the following-described real estate in the parish of Carroll, well worth the sum of $100,000, to wit:

1st. A certain plantation, known as "Black Bayou," fronting on the upper end of "Lake Providence" and "River Bayou," bounded on the east by lands of the estate of D. F. Blackburn, on the north by lands of Seldon Spencer and I. D. Kerr, and on the west by lands of Joseph D. Patton, containing in the aggregate 840 acres, more or less.

2d. A certain plantation, known as the "Home Place," situated on the south side of Lake Providence, bounded in front by Lake Providence, on the left or west by Oakland plantation, formerly owned by W. B. Sellers, on the right or east by the plantation of Elizabeth Bosworth, deceased, and on the rear or south by lands formerly owned by the estate of John Chambliss, known as "Jefferson Ridge," containing, in the aggregate, 1,500 acres, more or less.

3d. The undivided half of a certain plantation on the Mississippi river, below the town of Providence, and known as the "Hood & Wilson Place," said plantation being bounded on the front by the Mississippi river, on the south or below by the plantation known as the "Haggaman Place," on the north or on the rear by the plantation known as the George G. Wilson Place, and bounded above by the lower line of the town of Lake Providence, containing, in the aggregate, 692 acres of land.

4th. Certain tracts of land in said parish, described by official survey as the S. E. $\frac{1}{4}$ of sec. 48, S. W. $\frac{1}{4}$ of sec. 49, the N. E. $\frac{1}{4}$ of sec. 57, lots 1 and 7 of sec. 60, lots 1, 2, 3, 4, 5, and 6 of sec. 57, lot 3 of sec. 71, lot 4 of sec. 55, lots 5, 6, and 7 of sec. 51, lots 1, 2, and 3 of sec. 54, all in township 21, range 12 east; also the undivided half of W. $\frac{1}{2}$ of sec. 62, same T. and R., containing, in the aggregate, $1,992\frac{75}{100}$ acres.

That said lands were entirely unincumbered, except by a legal mortgage due by said Hood to his wife, Mrs. Julia Hood, for some $20,000.

That notwithstanding these facts the said Hood was largely insolvent, and, among others, was indebted in the sum of $39,319.49 to Henry Frellsen, of New Orleans, who was a partner in the firm of Frellsen & Stevenson, and the successor thereof had been the confidential friend, cotton factor, and commission merchant of said Hood from about the year 1847, for which sum the said Govy Hood confessed judgment in favor of said Frellsen in April, 1866.

That the utter and total insolvency of said Hood was well known to the said Frellsen during the whole of said years 1866, 1867, and 1868, and that said Frellsen actually advised said Hood to go into bankruptcy and relieve himself of his debts.

That in the month of July, 1868, said Frellsen pretended to issue execution on his said confessed judgment and pretended to advertise

for sale the three plantations first above mentioned, and did,
3 on the 5th day of September, 1868, pretend to purchase the same for the price and sum of $24,000.

That on the 23d day of November, 1868, said Frellsen pretended to issue an *alias fi. fa.* on said judgment, and to seize and advertise for sale the 1,992$\frac{75}{100}$ acres of land last above described, and to buy the same for the sum of $664.27 on December 5, 1868.

That in the month of December, 1869, said Frellsen pretended to sell one-half of the plantation first above described, and known as Black Bayou, to William Alling for the price and sum of $16,000, which sum the said Frellsen received in cash and for which he gave credit as hereinafter mentioned.

That on the 1st day of May, 1871, the said Frellsen did pretend to sell and convey all of the above mentioned and described properties, except the plantation known as Black Bayou, to the said Hood for the sum of $30,152, payable in seven installments and evidenced by mortgage notes.

Now, your orator avers that all of the before-mentioned sales, transfers, and proceedings, except the sale of one-half of Black Bayou to William Alling, were fraudulent simulations of the grossest kind, concocted and executed by the said Hood and Frellsen for the two-fold purpose of enabling said Hood to put his property beyond the reach of his creditors and of enabling said Frellsen, by means of an unlawful preference, to obtain payment of his claim in full; that to that end it was agreed that Frellsen should nominally execute his said confessed judgment, and should nominally buy in all of the property of said Hood, and should hold the same in his name until after the said Hood should have obtained his discharge in bankruptcy, at which time a reconveyance should be made to said Hood; that the said Hood should remain in possession and control of the properties so nominally sold, and that, although the title should nominally remain in Frellsen, the property should be the property of Hood, who was to be liable for all taxes, costs, and expenses thereon accruing or accruing from the nominal execution of said confessed judgment, and to be entitled to all rents and revenues therefrom derived and the proceeds of all sales of any part thereof; that the terms and conditions of this fraudulent agreement on the part of Frellsen were that he was simply to receive the amount of his judgment, principal and interest and costs, in full; that he was to be considered only as the nominal owner of the property, and that a formal reconveyance of the same was, at the proper time, to be made to Hood.

That accordingly said Frellsen, in July, 1868, issued execution on his said confessed judgment; that Govy Hood, at the foot of the writ, pretended to point out in writing the properties hereinbefore mentioned, except the 1,992.75 acres of wild land, and that on the 5th day of September, 1868, the sheriff of Carroll parish pretended to adjudicate the same to Henry Frellsen for the sum of $24,000, about one-fourth of their actual value.

That under said pretended writ no possession of said properties was ever taken by the sheriff, and that Govy Hood's possession of

said plantations has been continuous and uninterrupted from
4 the year 1812 down to this moment; that on the 23d of November, 1868, an *alias fi. fa.* was issued on said confessed judgment, and thirteen days thereafter, with Hood's written consent of the waiver of legal delays and legal advertisements, the said 1,992.75 acres of wild land was nominally adjudicated to Frellsen for the ridiculous price of $664.27.

That during the whole time that said Hood was in bankruptcy, to wit, from December 29th, 1868, to January 27th, 1871, he remained in possession and control of said properties—except Black Bayou, as hereinbefore explained—and regularly paid the taxes on the same; that during the whole of this period he was treated as the owner by said Frellsen, who corresponded with him as such and conferred with him as such about the sale of the Black Bayou plantation, as hereinafter explained, and who accounted to him as such for some of the rents and revenues therefrom received by the said Frellsen, and for the proceeds of the sale of the Black Bayou plantation, to wit, the sum of $32,000, which said sums were credited by said Frellsen during said period when Hood was an undischarged bankrupt on the said confessed judgment, and that the sum of $30,152, for which said Frellsen pretended to reconvey said properties, except Black Bayou, to said Hood on the 1st day of May, 1871, was the amount which said Frellsen claimed as a balance due him in the above-mentioned confessed judgment and account between the parties after crediting the same with the revenues above referred to, with the proceeds of the sale of Black Bayou above referred to, and with certain other assets held by said Frellsen in trust for said Hood before and at the time he was declared a bankrupt.

That the sale of the Black Bayou plantation above referred to was made in December, 1869, by said Hood to Wm. Alling for the price and sum of $32,000, for which amount said Frellsen gave said Hood the credit above mentioned; that Frellsen received $16,000 of the above sum, or its equivalent, in cash from Wm. Alling, and that for the other $16,000 he, by some arrangement with Alling unknown to your orator, decided to keep and own one-half of the Black Bayou plantation, which was already nominally his, and which was intended by the parties to become really and actually his.

Now, your orator avers that the above statement of facts shows that at the time said Hood was declared a bankrupt, in December, 1868, he was the sole and real owner of all the properties above described, although they were standing under simulated and fraudulent titles in the name of Henry Frellsen, and that they passed to your orator, by the assignment hereinbefore mentioned, on the 29th day of December, 1868, and that your orator is entitled to recover the same from the said Hood and the said Frellsen, with revenues at the rate of $10,000 per annum from December 29th, 1868, and is also entitled to recover from the said Frellsen the $16,000 received by him from Wm. Alling as the price of one-half of Black Bayou, with interest from December, 1869.

Your orator further avers that the fraudulent conspiracy between said Hood and said Frellsen above set forth was not known to your

orator until within a few weeks past, and that the same was
5 not known to anybody except to the said Hood and Frellsen and to their attorneys, Edward Sparrow and J. W. Montgomery, until the month of December, 1878, when the existence of this fraud was brought to light during the trial of a lawsuit between said Frellsen and Hood, and made to appear by the testimony of the parties and the production of a counter-letter between said Hood and Frellsen, dated October 26th, which said counter-letter had been, since its date, in the uninterrupted possession of Edward Sparrow, attorney-in-fact and attorney-at-law of said Frellsen and Hood, and, as will appear by the evidence herein to be adduced and as does appear by the counter-letter itself, one of the participators and beneficiaries therefrom.

That no amount of diligence or of vigilance on the part of your orator would have enabled him to discover said fraud prior to the trial of said lawsuit and the production of said counter-letter, at the term of the thirteenth judicial district court for the parish of Carroll in December, 1878, for the reason that the essential evidence going to show the same was rigidly concealed from the whole world, and the knowledge of it was not communicated to any one prior to said time.

Your orator further avers that the litigation above referred to between said Hood and Frellsen grew out of the attempt of said Frellsen to foreclose the mortgage given him by said Hood on May 1, 1871, to secure the sum of $30,152, which was the pretended price of the pretended retransfer to Hood by Frellsen; that Frellsen sued out in said thirteenth district court for the parish of East Carroll executory process on said mortgage and notes, which process the said Hood enjoined on the grounds and for the purpose set forth in the copy of the record hereto annexed and marked "B."

That, as will appear by the copy of the opinion and decree of the supreme court of the State of Louisiana, hereto annexed and made part hereof and marked Exhibit "C," the said court refused to inquire into the controversy between the parties on the ground that no court would listen to one alleging his own villainy, and the interposition of a court of justice could not be invoked by a dishonest bankrupt to enable him to reap the results of a successful fraud upon the law and upon his creditors; that said court therefore dissolved the injunction sued out by Hood.

That, as a consequence of the dissolution of that injunction, said Frellsen is proceeding to execute his said executory process on the properties above described as the "Home Place" and the "Hood and Wilson Place;" that he has seized the same under said process, and will proceed, on July 19th, 1879, through John Asberry, civil sheriff of the parish of East Carroll, to sell the same, unless he and the said sheriff are restrained and prohibited by the equitable writ of injunction from this honorable court; that such injunction should issue provisionally to prevent this sale of the property of your orator and to prevent thereby an irreparable injury to him.

That on April 30, 1870, while said property known as the "Hood and Wilson Place" was in the name of Henry Frellsen the parti-

tion of the same was made between the heirs of Wilson and
6 Frellsen for the benefit of Hood, and the divided south half thereof was set apart nominally to Frellsen, but actually to Hood, who also received in said act of partition, for the benefit of Hood, certain mortgage notes, for which he never accounted to the said Hood, and which was one of the causes of controversy between them.

That your orator makes the above allegations to show that the undivided half of the Hood and Wilson Place has become a divided half, and to show, further, the character of the relations between said Hood and Frellsen with reference to this property during the bankruptcy of the former.

And, for the purpose of showing in Frellsen the consciousness of fraud in these transactions with Hood, your orator avers that after the scathing decision of the supreme court rendered in the matter above referred to and before the same came to the knowledge of your orator the said Frellsen, fearing that your orator would become acquainted with the facts of this fraud and would institute these proceedings, attempted to procure your orator's resignation as assignee of said Hood, and the filing and acceptance of his account for the purpose of closing up and winding up said estate, and of making it impossible that this suit should be brought; that your orator, not suspecting or knowing the origin, cause, or object of such resignation and the filing of such account, did actually present the same to the court, which fortunately did not act upon them, and which your orator withdrew as soon as the facts of this case came to his knowledge.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may upon their corporal oaths, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and that your orator may be decreed the owner, in his capacity of assignee, of all the properties hereinbefore mentioned from the 29th day of December, 1868, and entitled to recover from Govy Hood and Henry Frellsen the rents and revenues thereof, and that said Govy Hood may be ordered to retransfer to your orator said Home Place and said divided south half of the Hood and Wilson Place and said 1,992.75 acres of wild lands, and that said Henry Frellsen may be ordered and decreed to pay to your orator the $16,000 received by him from Wm. Alling for the sale of one-half of the Black Bayou plantation, with interest from December, 1869, and to make to your orator a transfer of the other half of said Black Bayou still standing in his name, and that the mortgage put upon said land by said Hood in favor of said Frellsen on May 1, 1871, for $30,152 may be canceled, annulled, and erased, and that said defendants, Henry Frellsen and John Asberry, sheriff of the parish of East Carroll, their agents, deputies, and at-

torneys, may be restrained and enjoined, preliminarily, provisionally, and perpetually, by the order and injunction of this hon.
7 court, from executing or attempting to execute, directly or indirectly, the executory process now in the hands of said sheriff in the case of Henry Frellsen *vs.* Hovy Hood, No. — of the docket of the 13th judicial district court for the parish of East Carroll, or from selling or attempting to sell under said process or any other process against Govy Hood the properties hereinbefore described and belonging to your orator in his capacity aforesaid, and that defendants may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other general relief as to this honorable court shall seem meet and shall be agreeable to equity—

May it please your honor to grant unto your orator the writ of injunction, as well preliminary and provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said Frellsen and the said John Asberry, their agents, attorneys, and deputies, and each and every of them as is hereinbefore in that behalf prayed; and may it please your honor to grant unto your orator the writ of subpœna, issued out of and under the seal of this honorable court, directed to the said Govy Hood, Henry Frellsen, and John Asberry, sheriff of the parish of East Carroll, defendants, commanding them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them; and your orator will ever pray.

(Signed) W. G. WYLY,
THOS. J. SEMMES,
E. H. FARRAR,
Solicitors for Comp'nt.

On this 3d day of July, in the year of our Lord 1879, personally came and appeared before me, the undersigned authority, Emery E. Norton, who, being by me duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed as above and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. E. NORTON.

Subscribed and sworn before me on the day and date aforesaid.
JONATHAN INGERSOLL,
U. S. Comm'r, Dist. of Connecticut.

Supplemental Bill. Filed July 10th, 1879.

To the Honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

Emery E. Norton, of the State of Louisiana and city of New Orleans, assignee of the bankrupt Govy Hood by appointment of

this honorable court in proceedings No. 888 of the docket hereof, brings this his supplemental bill against Govy Hood and John Asberry, in his capacity as sheriff of the parish of East Carroll, both of said parish of East Carroll and State of Louisiana, and against
8 Henry Frellsen, of the city of New Orleans and State of Louisiana.

And thereupon your orator complains and says that he has heretofore filed in this honorable court a bill against these same defendants to compel and transfer to him of certain lands owned by said Hood at the time of his bankruptcy and fraudulently concealed and withheld from your orator at that time by simulated transfers to H'y Frellsen, and for other purposes, as more fully appears by reference to said original bill heretofore filed; that on said original bill a restraining order has issued to prevent the sale of the two plantations known as the Home Place and the Hood & Wilson Place, which was advertised to take place on July 19, 1879.

That said restraining order will remain in force until November, as the application for injunction cannot be heard before that time; that said plantations were, prior to the seizure thereof by said Frellsen, leased by Govy Hood to J. Shelby Irvine, Esq., who has subleased them to varions and sundry colored lessees; that these sublessees have at this time flourishing crops on said lands leased by them, but are dependent upon somebody to furish them supplies to complete and gather the same; that Govy Hood is utterly insolvent and entirely unable to furnish such supplies; that the sheriff who is in possession of said property under said writ of seizure and sale has no authority and no means to make any such advances, and that Mr. Irvine, although desirous, refuses so to do, because he fears that he would lose the same, or that he would have some harassing lawsuit about it with the seizing creditor.

Your orator avers that unless some immediate and prompt action is taken the crop for the year 1879 on said plantations will be utterly lost, and that the agricultural laborers thereon will become disheartened and demoralized and will abandon said plantations to the almost irreparable injury thereof, and that is to the interest of all parties that a receiver should be appointed to take charge of said plantations provisionally during the pendency of the application for an injunction herein filed, by whose authority the tenants can be supplied, the growing crop saved, and the laborer kept upon the plantations.

That as said plantations belong to and were vested in your orator on the bankruptcy of said Hood in 1868, and as said Hood is totally insolvent and will or may collect and use the revenues that will arise therefrom and which belong to your orator, in which event they would be totally lost and could never be recovered from said insolvent, and as the possession of said plantations would revert to Hood in case your honor should, on the hearing, grant the injunction prayed for in the original bill against the sheriff now in possession of the same, it is absolutely necessary that some proper person living in the neighborhood should be appointed receiver of

said plantations, with power to lease and conduct the same to best advantage of all parties.

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not have the relief thereby prayed, and may, upon their corporal oaths, according to their best and utmost knowledge, remembrance, information and belief,
9 full, true, direct, and perfect answer make to the premises and to all the several matters hereinbefore stated and charged *and* separately interrogated as to *such* and every of said matters, and that your honor will immediately appoint a provisional receiver who shall, during the pendency of the application for injunction made herein in the original bill, have authority to take charge of and manage said "Home" and "Hood and Wilson" plantations and do all thing necessary and proper to preserve the growing crop thereon and to keep the laborers from abandoning the same for the benefit of all the parties concerned, and that your honor, on the trial of said application for the injunction, will grant the same, and will at the same time, on due notice given thereof, confirm the appointment of the provisional receiver, and give him power and authority to manage and control said plantations during the pendency of this litigation, and that the court will decree fully as prayed for in the said hereinbefore filed original bill—

May it please your honor to grant unto your orator writs of subpœna, directed to said defendants, Govy Hood, John Asberry and Henry Frellsen, respectively, commanding them and each of them to appear, on a certain day and under a certain penalty, before your honor in this court and then and there answer this supplemental bill and abide the order and decree of the court.

W. G. WYLY,
T. J. SEMMES,
E. H. FARRAR,
Solicitors.

On this 3d day of July, 1879, personally came and appeared before me, the undersigned authority, Emery E. Norton, who, being by me duly sworn, deposes and says that he has read the above supplemental bill as above and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

E. E. NORTON.

Sworn and subscribed before me the day and date aforesaid.
JONATHAN INGERSOLL,
U. S. Com'r, Dist. of Connecticut.

Order of Court.

Let this bill of complaint and the supplemental bill herein be filed, and let the defendants named in the within bill of complaint show cause, on the 3d Monday of December, A. D. 1879, why the

injunction *pendente lite* therein prayed for should not be granted and why the receiver asked for in the supplemental bill should not be appointed; meanwhile, and until the hearing upon this order, let the restraining order issue restraining the defendants and each of them according to prayer of the said bill, and let J. Shelby Irvine be appointed custodian of the Home and Hood and Wilson plantations, with the ordinary powers of receiver, so far as relates to the making the crops and the management of said plantations, with leave to either party to apply to the court for any further order in the premises.

July 3, 1879.

EDWARD C. BILLINGS, *Judge.*

Pro Confesso. Entry at Rules, November 3, 1879.

E. E. NORTON, Assignee,
vs.
GOVY HOOD *et al.* } No. 11414.

On motion of Wyly, Semmes and Farrar, solicitors for the complainant, and on suggesting that the defendants were all served with subpœnas in chancery more than 20 days before the rule day in September, 1879, on which day they were ordered to appear, plead, answer or demur, and that they have all failed so to do up to this date,

It is ordered that the bill and supplemental bill herein filed be taken *pro confesso* against all the defendants, to wit, Govy Hood, Henry Frellsen, and Jno. Asberry, sheriff of the parish of East Carroll.

Order. Pro Confesso Set Aside as to H. Frellsen, November 17, 1879.

E. E. NORTON, Assignee,
vs.
GOVY HOOD *et al.* } No. 11414.

On motion of H. G. Morgan, solicitor for the defendant, Henry Frellsen, ordered that the *pro confesso* entered on the 3d day of November, 1879, be set aside, so far as said Frellsen is concerned, and that he have leave to file demurrer, plea, or answer to the bill.

Demurrer, Pleas, and Answer of Henry Frellsen. Filed 17th November, 1879.

The District Court of the U. S., District of Louisiana.

E. E. NORTON, Assignee,
vs.
GOVY HOOD *et als.*
No. 11414.

The demurrer, pleas, and answer of Henry Frellsen, a defendant in a suit commenced in this court by bill against him and other defendants in chancery, by E. E. Norton, assignee in bankruptcy.

This defendant reserves all benefit of exception to the bill because of its manifold defects, errors, and untruths; also he reserves the advantage of plea and demurrer to such parts of the bill as he may be advised it is proper to plead or demur to, and for answer says:

1st. He admits that the codefendant Hood was owner of
11 the lands described in the bill and which are included in the deeds of the sheriff of the parish of Carroll to him, as hereafter mentioned, in the year 1866 and after, until the same came to the ownership of respondent, in the year 1868. The defendant does not admit that these lands could have produced the sum mentioned in the bill or a like sum at any sale, public or private.

2d. The defendant admits and asserts that the said Govy Hood, in February, 1866, was indebted to him *to* the principal sum of $39,810.92, evidenced by notes dated 1862 and bearing interest at the rate of 8 per cent. per annum until paid, and that in February, 1866, there had accrued $10,102.63 of interest on the notes, making a debt of $49,921.59 on the 13th of February, 1866.

3d. The defendant, further answering, says the said Govy Hood confessed a judgment for the principal and accrued interest of the said notes in the district court of the parish of Carroll, which was never annulled, reversed, or in any manner impaired during all the proceedings hereafter mentioned, but remained in full force and operation and valid and binding upon the said Hood, and was duly recorded in the book of the recorder of mortgages shortly after it was confessed, and was a judicial mortgage binding all the lands of the said Hood before mentioned from about February, 1866.

4th. The respondent says that in 1868 this respondent caused an execution to be issued and to be levied upon the lands of the said Hood, as mentioned in the bill, and afterwards in the same year an *alias* execution was issued and levied upon other lands.

That under these executions the lands were legally and duly advertised and sold by the sheriff at public sale, and this respondent became the purchaser and received the sheriff's deed, and was thereby vested with all the rights, title, and interest of the defendant Hood.

All of which will appear by a record of the judgment, executions, returns, and the deeds to this respondent as purchaser, to be filed with this answer, marked Exhibit "A."

And this respondent says that it is not true there was any pretended sale or simulated titles, but he avers that the sale was a serious and determinate exercise of his unquestioned legal right to coerce payment of a valid and unsatisfied judgment by a sale of the property of his debtor which was legally subject to it. The debt had increased from 1866, by the addition of interest, to be above the sum of sixty-one thousand dollars, a sum which Hood had no ability to pay except by the sale of this property.

There was no occasion of any collusive or fraudulent agreement on the part of this respondent.

He had, from the magnitude of his debt, full power to sell and to buy the property, and there was no probability of competition.

The respondent states that the charges of the bill that there was any pretended simulation, fraud, or collusion at the sale or in the purchase are destitute of the slightest foundation in matter of fact.

5th. For further answer this respondent says that after his purchase on September 5th, 1868, viz., on the 26th of October,
12 1868, he made the agreement to sell the parcels of land mentioned in it to Hood, being all of the lands described in the sheriff's deed and his returns on the execution.

The consideration for this agreement and the motives for it are plainly set forth in the agreement.

The motives were a disposition to oblige and assist Hood by affording him an opportunity to reinstate himself if he should find it practicable. The consideration was that Hood should pay, with exact punctuality, the debt he owed to him in the manner set forth in the agreement. It is stated and reiterated that upon a failure to meet the terms of the agreement by Hood this respondent was to be discharged and relieved.

The agreement provides for the payment of an installment of $7,000 and for the payment of the costs and expenses on or before the 15th December, 1868; for the payment of installments annually of $8,000 for four years successively from that date; for payments to Sparrow & Montgomery. Not one of these payments was made.

On the 15th of December, 1868, Hood made default. In a fortnight after that day he petitioned to be declared a bankrupt. The agreement ceased to be operative before the order was made on the petition. The assignee took nothing from it. No right or claim to the property passed by that order to him. If he had funds to pay the installments then due a court would not have compelled the owner of the property to perform a contract from which he was discharged and released by its terms.

This agreement is a distinct, original, independent agreement by this respondent, as the owner of the property, with Hood, who desired to purchase it by performing the engagement and stipulations it contains.

A copy of this paper is filed with the answer as Exhibit " B."

6th. This respondent, for further answer, says that the said co-defendant, Hood, was declared a bankrupt in February, 1869, and on the 26th of that month made the usual assignment to Norton, assignee. What title did Norton then acquire? He acquired the rights, if

there were any rights, vested in Hood by the agreement in October, 1868—a right to purchase the lands by a fulfillment of the terms of the agreement as made by the bankrupt, if that right had not been lost or was then a valid and subsisting right which could be enforced.

This respondent avers that said Hood did not pay the installments of money contained in the agreement as he undertook, nor did he pay the costs and charges, and that neither Norton nor Hood have offered to do so, either in 1868, 1869, 1870, or afterwards, but the said agreement became nugatory.

This defendant avers that he did not convey nor lease the property to Hood nor to Norton during those years, but the same was under his own exclusive control and entirely subject to his title and possession as purchaser.

7th. For further answer this defendant says that the said Norton, as assignee, did not, from the date of his appointment as
13 assignee in 1869 to the date of the filing of this bill, offer to perform any of the conditions of that agreement nor make any demand upon this respondent for a conveyance, nor has any creditor of Hood's taken measures to controvert any of the rights of respondent to this property.

And this respondent charges that no creditor of Hood has proved any debt or claim against him in the court of bankruptcy, and that this is not a case brought for creditors or a creditor, nor were there proceedings pending in bankruptcy at the date of the filing of the bill. There was, however, some intercourse between the said Norton and this defendant and his attorney, General Edward Sparrow, of Carroll parish. After Hood had been adjudicated a bankrupt his assignee, Norton, the present plaintiff, threatened respondent's attorney, Edward Sparrow, with proceedings looking to the recovery by him, as assignee, of all the lands mentioned in the bill, and which had been acquired by respondent at sheriff's sale, in 1868, unless this respondent would pay him (Norton) the sum of one thousand dollars, declaring that he believed that respondent's titles to the said property were simulated and void, and that the entire property still belonged to the bankrupt or his estate, but that the payment to him (Norton) of $1,000 as aforesaid would quiet respondent's title and avoid all difficulty in the matter. Gen. Sparrow called at respondent's office in this city and told him of this threat and attempt to extort money from him, and further stated that Norton desired to see this respondent. Respondent asked his attorney, Sparrow, for his opinion and advice in the matter; whereupon Sparrow replied that Norton could not interfere with the property; that it belonged to this respondent in law and in fact, and that Norton's threat was only made to induce respondent to pay him $1,000, which threat and proposition respondent should indignantly repel, and for that purpose he (Sparrow) advised a visit to Norton at his rooms.

Respondent accordingly went to the rooms occupied by E. E. Norton, assignee, in company with Edward Sparrow, and when there Norton repeated to respondent what he had told Sparrow in relation to the payment of $1,000 in order to quiet his title; whereupon re-

spondent replied that he did not think Norton, as assignee of Hood, had any right or claim to the property which respondent had acquired at a judicial sale in the parish of Carroll, and that he most positively declined to pay him (Norton) the $1,000 demanded of him, or any other amount whatever.

A lengthy and angry discussion followed between Sparrow and Norton in the presence of this respondent, Sparrow endeavoring to prove to Norton that respondent was the lawful owner of the property, and that any proceedings which he (Norton) might take as assignee would only prove vexatious.

Norton, turning to respondent, urged him to think over the matter, and warned him that if the $1,000 was not paid to him as required that he would give respondent much trouble and make it cost him much more in the end.

14 Respondent heard nothing further on the subject for a long time thereafter—nothing, indeed, until about the time that Hood made application for his discharge in bankruptcy. About that time Hood called at respondent's office, on Magazine street, and informed him that Norton had told him (Hood) that he should not have his discharge until he had paid him (Norton) $1,000; that he had denied his ability to do so, and that Norton had then told him to go to respondent and request him to advance the money and to tell respondent that if he did not do so that he (Norton) would give the respondent a great deal of trouble.

Respondent refused to advance any money and Hood left him.

Some time after Hood returned to respondent's office and stated that Norton had consented to take $500 and grant him his discharge, and asked respondent to pay the amount for him, which respondent again declined to do, telling Hood that he might tell Norton to go ahead whenever he liked, but that he would get no money out of him. The said Norton never did make any other or further claim on this respondent, nor did he contest in any manner the validity of his judgment or the validity of the sales made under it, nor did he seek in any manner to become a party to the agreement made in 1868 for the resale of the said property to the said Hood.

The insinuation in the bill that there was any concealment of that agreement by this defendant, or that there was any disposition or desire to keep the knowledge of it from said assignee, is wholly without any foundation in truth.

This respondent was not only willing but earnest in his desire that the said Hood should fulfill his contract. This defendant in making the contract exercised his own independent judgment of his own rights, and dealt with Hood as an independent party, competent to contract.

There was no design to have any collusion by agreements or to establish any other expectations or rights than those plainly expressed.

This respondent denies that there were any collusive or unexpressed agreements or that there was any intent or purpose to hinder, delay, or defeat the claims of any party whomsoever by any of the acts done by this respondent.

This defendant avers that the allegations of the bill in contradiction of these statements are wholly untrue and unfounded, and this defendant pleads that this claim is inequitable and unjust; that it is, moreover, stale and barred by the lapse of time and by the terms of the 5052 section of the Revised Statutes of the United States, as well as by the principles of equity jurisdiction, and as this respondent pleads.

8th. This respondent, further answering, says that he has now disposed of all the matters of charge or allegation, and has answered to the contracts and acts which preceded the bankruptcy of the said Hood and his assignment to Norton, and to the intercourse with Norton prior to the discharge of Hood as a certificated bankrupt in 1870.

By the discharge of Hood as a bankrupt the balance due
15 on the judgment after the sales made in 1868 and the credit for those sales was discharged as a debt.

This respondent had no claim on the discharged bankrupt for this balance of the debt, nor had this respondent any claim on Hood upon his covenants in the agreement of 1868 for the sale of the property to him; that agreement was simply inoperative and valueless.

In May, 1871, this respondent and Hood made a new agreement relative to so much of the property as had not been sold by this respondent. One of the plantations was sold previously to that date by respondent.

Hood had received his discharge at this date.

This respondent sold and delivered to Hood the two plantations specified in the bill as the Home Place and the Hood & Wilson Place for the sum of $30,152, divided into six annual payments of $5,025 each, with 8 per cent. per annum interest, and Hood gave a mortgage on the property to secure the payment of his purchase-money.

Under this contract the said Hood took possession, and the proceedings which this plaintiff has brought this bill to enjoin were commenced in the State court to enforce the payment of the debt then and thus contracted.

These proceedings as enjoined are the result and consequence of a litigation which ensued in the State court, and which was finally settled in the supreme court of this State, at the close of its last term, in June last, 1879.

The said Hood, under pernicious counsel, petitioned the district court of East Carroll to restrain this respondent from selling the land for the payment of the notes, and so exuberantly did he deal forth charges of fraud and of collusion to defraud the creditors and his own intimate connection with those contrivances that when the case came to the supreme court that court accepted his own declarations as true in so far as they had reference to himself, and, to borrow from the bill of the plaintiff, they said:

"No court would listen to one alleging his own villainy, and the interposition of a court of justice could not be invoked by a dishonest

bankrupt to enable him to escape the results of a successful fraud upon the law and upon his creditors."

They dismissed his petition. The same parties prosecuting the suit for Hood and who had maintained his villainy, as this defendant believes and is informed, sought this plaintiff and have engaged him to lend his name to bring this suit. One attorney, at least, who prosecuted the luckless petition, so redolent of confessed villainy, appears in this case.

The plaintiff is mistaken in supposing that this respondent made any attempt to obtain his resignation or designed any corruption of his immaculate integrity and official rectitude.

The most that was proposed was that he should settle his final account, which had been delayed for ten years.

The cause of the application this respondent is prepared to establish.

16 His connections had already been approached for compromise and a bankrupt assignee named as an agent in further litigation, and that litigation menaced as affording a ground for compromise, so called.

This defendant, further answering, says that he is well aware that this court cannot and will not entertain jurisdiction of any controversy between the respondent and Hood, citizens of the same State, whose controversy has proceeded to a final judgment in the supreme court of the State, and where the property has been seized under process validly issued by the State court.

Nor can this court entertain jurisdiction in favor of the said plaintiff, except as the fact shall fully appear that the bankrupt's estate is unsettled and that the cause is one properly arising in bankruptcy, for the bankrupt act is repealed, and all the jurisdiction of that court in bankruptcy has been reduced to narrow limits and the equity powers of the court diminished.

And this respondent brings to the notice of the court that the suit commenced by this respondent in the 13th judicial district court for the parish of East Carroll is to enforce a mortgage to secure the purchase-money on a sale which was made in 1871, after the discharge of Hood from bankruptcy and his relations to that court had ceased.

That the property specified in the mortgage to this respondent was never within the possession, control, or authority of this court or of the assignee, but that before any bankruptcy it had been judicially sold under a judgment of a court of competent jurisdiction rendered in 1866 for an undisputed debt in favor of respondent against Hood before the bankrupt act was enacted.

That there is not a particle of evidence of any conveyance of this property by the purchaser to any person whomsoever until the sale of the Black Bayou plantation, in 1869, to William Alling and the sale in 1871 for the notes and mortgage which are the subject of the suit in the State courts, viz., the thirteenth judicial district court of East Carroll and the supreme court of the State; that more than ten years elapsed from the sale of the property in 1868 till this bill was filed, and ten years have elapsed since the property of the

bankrupt was assigned to this plaintiff without any claim upon the property by him, and that years have elapsed between the sale of the property of the bankrupt and the execution of the mortgage which this respondent is enforcing in the State court without any complaint.

It does appear that Hood, in 1871, made the purchase, accepted the deed, and executed the mortgage to secure the purchase-money, and only after a default years thereafter was the very remarkable confession of turpitude made in a petition signed by attorneys employed for him.

The respondent submits that such confessions are very conclusive upon a suitor when they are a ground of his suit, but are without any force as to any other person, and in so far as they apply to this defendant they are wholly untrue and without any foundation in fact.

17 This respondent prays that this answer may be taken as a demurrer to all of the claims or charges or prayers for discovery or relief in respect to the disturbance of or interference with the proceedings in the district court of East Carroll between the respondent and Govy Hood.

And this respondent pleads to the jurisdiction of the court and prays judgment whether it will or can take cognizance of the controversy between this respondent and said Hood in that court.

And now, having fully answered, this defendant prays judgment of the bill and that the same may be dismissed at the costs of the plaintiff.

H. G. MORGAN,
Solicitor for Defendant.
JOHN A. CAMPBELL,
Of Counsel for Defendant.

THE STATE OF LOUISIANA, *City of New Orleans:*

Before me personally came Henry Frellsen, a defendant in the case stated in the bill, who maketh oath and saith the matters of fact stated in the answer aforesaid of this deponent are true in substance and matter of fact.

(Signed) HENRY FRELLSEN.

Sworn and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal this November 15th, 1879.

[SEAL.] ANDREW HERO, JR.,
Commissioner of Circuit Court.

Replication. Filed March 1, 1880.

E. E. NORTON, Assignee,
vs.
GOVY HOOD, *et al.* } No. 11414.

The replication of E. E. Norton, assignee of Govy Hood, complainant, to the answer and plea of Henry Frellsen, one of the defendants.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer and plea of the said defendant, for replication thereunto, saith—

That he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer and plea of the said defendant are very uncertain, evasive, and insufficient in the law to be replied to by this replicant, without that, that any other matter or thing in the said answer and plea contained materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in his bill he hath already prayed.

(Sig.) W. G. WYLY,
E. H. FARRAR, *Sol'rs.*

18 *Transcript of Appeal from U. S. District Court.*

* * * * * * *

List of creditors who have proved their debts at first meeting.

U. S. District Court.

In the Matter of GOVY HOOD. 888.

At New Orleans, in said district, on the 24th day of February 1869, before Mr. J. R. G. Pitkin, one of the registers of said court in bankruptcy.

The following is a list of creditors who have this day proved their debts:

None.

J. R. G. PITKIN,
Register in Bankruptcy.

True copy.

J. R. G. PITKIN, *Reg.*

SCHEDULE B (1).

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

Interest in Lands.

Particular description of all real estate owned by petition- or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Estimated value.
8 town lots in old town of Lake Providence, outside the line. These lots are in the old town of Providence, and are each 100 feet front on the north side of Railroad street and 150 feet deep, and adjoin the academy lot. They were inherited from my father, Harbit Hood. The title deeds and papers relating to them were destroyed during the war; title on record in Carroll parish.	The encumbrances are the judgments mentioned in Schedule A No. 3.	Unknown.

SCHEDULE B (2).

Personal Property.

	Dollars. Cents.
A. Cash on hand	None.
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None.
C. Stock in trade in my business of ——, at ——, of the value of	None.
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person	None.
E. Books, prints, and pictures	None.
F. Horses, cows, sheep, and other animals	None.
G. Carriages and other vehicles	None.
H. Farming stock and implements of husbandry	None.
I. Shipping and in vessels	None.
K. Machinery, fixtures, and apparatus used in business, with the place where each is situated	None.
L. Goods or personal property of any description, with the place where each is situated	$300

SCHEDULE B (3).

Choses in Action.

A.	Debts due petitioner on open account	None.
	Open ac. against J. D. Kerr, being amount of 12 months' bond I paid for him in case of —— —— *vs.* J. D. Kerr	$1,500
B.	Stock in incorporated company and interest in joint stock companies:	
	3 shares in a race-course at Louisville, Ky., of the value of	300
	C. Policies of insurance	None.
22	D. Unliquidated claims of every nature, with their estimated value	None.

Oath to Schedule B.

UNITED STATES OF AMERICA, *ss:*

District Court of Louisiana.

On this 26 day of December, A. D. 1868, before me personally came Govy Hood, the person mentioned in and who subscribed to the foregoing petition and schedule, marked B, respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

GOVY HOOD.

GEO. C. BENHAM,
U. S. Com.

SCHEDULE A.

Creditors Holding Securities.

N. B.—Particulars of securities held, with dates of same and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor or with any other person; and, if so, with whom.

Names of creditors.	Residence and description.	Where and where contracted.	Value of securities.	Amount of debts.
Citizens' Bank of Louisiana	New Orleans, secured by mortgage on two tracts of land and plantation in Carroll parish, 4 notes, each for $206, dated October 4, '66, due 1, 2, 3, and 4 years thereafter.	Carroll parish, Oct. 4, '66	Unknown	$824 00
Same	4 notes, each $375; same security	" "		1,500
John A. Miller	Greenville, Miss., 12 notes; same security, same date	" "		9,787 56
Pilcher and Goodrich	N. O., 4 notes for $4,061.88, each due 1, 2, 3, 4 y'rs, and on 2d note credit of $601.51 is made; all secured by same mortgage.	" "		18,407 52
Same	1 note, same date, due 2 y'rs; sec'd by same mortgage	" "		601 51
D. H. Gordon	N. O., 8 notes sec'd by same mortgage, same date, due 1, 2, 3, 4 y'rs.	" "		3,367 48
Est. of H. P. Walworth	N. O., 4 notes sec'd by said mortgage, of same date, and due 1, 2, 3, 4 y'rs.	" "		3,035
J. H. Hanna	N. O., 4 notes, sec'd by said mort., due 1, 2, 3, 4 y'rs	" "		2,434 48
Unknown	4 notes, sec'd by said mort., due 1, 2, 3, 4 y'rs The property mortgaged to secure all the notes has been sold under a prior judicial mortgage to Henry Frellsen in Sept., 1868. The note of $601.50 above mentioned may perhaps belong to R. W. Dean, of N. Orl's.	" "		3,350
Mrs. Julia H. Hood, wife of petitioner.	This amount being for money of which I have from time to time used for my benefit and is secured by a legal mortgage on all my property in Louisiana.	Rec'd in Carroll parish & in Marion county, Ky.		20,000 00

Creditors Whose Claims are Unsecured.

N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown the fact must be stated and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in such case, and the place where such indebtedness occurred.

Names of creditors.	Residence and *occupation*.	Amount.	When and where contracted.	Nature and consideration of the debt and whether any judgment bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.
Citizens' Bank of Louisiana	N. O., note, 8% int. from May 29, '62	1,500 00	Carroll parish	Signed by Hood & Wilson, joint contractors.
Same	" " 8% " Oct. 28, '62	1,800 00	"	Signed by Hood & Wilson, joint contractors.
Ch's E. Alter	" " 8% " Dec. 24, '61	4,600 00	"	
Henry Frellsen	" bal. judg't, 1867		"	
E. Reilly	" judg't, Oct. 12, '67	828 68		
Geo. E. Saltenberger	Ark., claim by suit in '67	2,500 00		
Alfred Lewis	Provid., La., judg't, Oct. 12, '66	353 00		
Eagle Cotton Gin Co.	D'ft on Pilcher & Goodrich			
W. S. Cushing, ag't	N. O., date, May 15, '61	270 50		
Phillips & Scally	Louisville, Ky., 2 notes, am't'g to	8,500 00	Louisville, 1867	
Bryan P. Scally	" open account	3,205 10	" 1858	
Bank of Kentucky	Note for $4,000; int., 1,200	5,200 00	" "	
Same	Acc'pt. of B. P. Scally, d'ft	619 18	" "	
Henry Marks	No note	1,048 00	Carroll p'h, 1858	

E. Caronbo	Unknown	Unknown		For gin stand.
Succ. R. B. Jones	Natchitoches, note, about	950 00	Carroll p'h, 1859	
Parker & Vorhoef	Louisville, Ky., d'ft on Philips	693 24	1867	
Wm. F. Talbot	Bardstown, 1 bal. on judg't	1,300 00	Marion Co., '68	
Hays & Guest, ag'ts	Providence, La., note, 1 Nov. '67	209 80	1867	For supplies.
D. R. Young & Co.	Louisville, Ky., d'ft to them, Nov. 9, '67.	1,688 80	Louisville, "	
Jno. Guest	Provid., La., note, 1 May, '67	748 95	Carroll p'h	
Young, Cave City, Ky.	Note for	500 00	" 1867	
D. L. Morgan	Provid., acc't of bal. of Rob. Lewis	250 00	" 1866	
Hays & Guest, ag'ts	" acc't for, about	30 00	" 1867	
James R. Tompkins	Account	9 50	" 1868	
Hays & Guest, ag'ts	Account	52 55	"	
Pilcher & Goodrich	N. O., bal. ac. due by Hood & Wilson	Unknown		
Campbell & McKee	Morganfield, Ky., d'ft for M. S. Hancock	1,500 00	"	
Geo. W. Hitchens	Goliad, Texas, 1 note, 900; 1 do., 1,500	2,400 00		
R. W. Deane	N. O., note for	601 50		
Bryan P. Scally	Louisville, Ky., note for $3,200, acc't, 1657	3,857 10		
Simon Lewis	Providence, ac.	33 75		For goods furnished.
Hardaway & White	Vicksburg, d'ft on Frellsen & Stevenson, in judgment	242 70	1867	
Thos. Lennox	Red River, by Texas, judg. in Carroll court	500 00	"	
C. H. Webb	Provid., La., bal. acc't.	43 32	1868	
W. M. Pinckard	N. O., judg't in C. C.	800 00	1853	
Louis Selby	Memphis, Tenn., judg't	3,653 00	1856	
Same	" " "	5,360 00	1856	
Estate of Da Bayley	Providence, open ac.	60 00	1865	
Bass & Stein	Acc't for beef	70 00	1868	

25 SCHEDULE A 2 AMENDED.

Particulars of securities held, with dates of same and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor with any other person; and, if so, with whom.

Names of creditors.	Residence and description.	When and where contracted.	Am't of debts.
John Taylor	Residing at or near the town of Lebanon, Marion Co., Ky., a note for $3,000, dated the — day of —, 1865, payable 2 years after date, with interest thereon at 8 % per annum from date, & secured by a mortgage upon a tract of land in and adjoining said town of Lebanon & which was occupied as a residence by petitioner's family at the date of the note & mortgage, which contains 50 acres. At the maturity of said note $1,000 was paid upon it, leaving a balance due, with interest, say $2,500.	Contracted at Lebanon, Marion Co., Ky., in the spring of 1865. Exact date not known.	$2,500

GOVY HOOD, *Petitioner.*

Amended schedule filed by leave of court April 1, 1869.

Oath to Schedule A.

UNITED STATES OF AMERICA, *District of Louisiana,* } *ss:*

On this 15 day of March, A. D. 1869, before me personally came Govy Hood, the person mentioned in and who subscribed to the foregoing amended petition and amended schedule, marked A, respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

GEO. C. BENHAM, *U. S. Com.*

Certificate.

26 United States District Court in and for the District of Louisiana.

CLERK'S OFFICE.

I hereby certify that the foregoing 41 pages do form and contain a true and correct transcript of the originals on file and of record in the matter of Govy Hood, numbered 888, in bankruptcy, of the docket of the said court.

In faith whereof I have hereto set my hand and the seal of our said court, at New Orleans, in said district, this 30 day of October, A. D. 1877.

[SEAL.] J. DEVONSHIRE, *Clerk.*

I, Edward C. Billings, U. S. judge for the district of Louisiana, do hereby certify that John Devonshire, whose genuine signature is affixed to the foregoing certificate, is and was at the time of signing the same the duly qualified clerk of the United States district court for said district; that full faith and credit are due and owing to all his acts as such, and that the said attestation is in due form of law.

Witness my hand and seal, at the city of New Orleans, in said district, this 30 day of October, A. D. 1877.

[L. S.] EDWARD C. BILLINGS, *Judge.*

27 Proceedings in suit of Govy Hood *vs.* Frellsen, No. 6364, in the 13th judicial district court for the parish of East Carroll, annexed to the bill as Exhibit B.

No. 6364.

To the judge of the 13th judicial district court in and for the parish of Carroll:

The petition of Govy Hood, of your said parish, with respect shows—

That on the 24 day of December, 1874, one Henry Frellsen, a resident of the city of New Orleans, of this State, obtained from your honorable court an order of seizure and sale in suit 6326 on the docket of your said court, styled Henry Frellsen *vs.* Govy Hood, ordering and decreeing the seizure and sale of that certain tract of land, situated on Lake Providence, known as the Hood Home Place, and lying between the Oakland plantation and the plantation
28 of Thompson and Lonsdale; also the Hood and Wilson Place and certain wild lands and lots, all situated in your said parish, the same being more fully described in the said suit No. 6326, to which petitioner refers, making the same a part of this petition.

Petitioner shows that said order of seizure and sale was granted to enforce the payment to said Frellsen of six promissory notes, each for the sum of $5,025.23, all dated May 1, 1871, bearing 8% interest from date, all executed by petitioner to the order of said Frellsen, and purporting to be secured by mortgage on all the property above referred to.

Petitioner represents that notice of the foregoing order of seizure and sale has been duly served upon petitioner. Now, petitioner shows that the said order of seizure and sale and proceedings to enforce the same are illegal and oppressive for the following reasons, viz:

29 Because that at the time the aforesaid six promissory notes purport to have been executed the said Henry Frellsen was indebted unto your petitioner in the sum of $13,300, which amount,

with legal interest thereon, ought to have been credited by said Frellsen on the first three of said mortgage notes as they respectively fell due.

This said sum was for two notes, each for the sum of $3,650, executed by George G. Wilson to the order of petitioner, and transferred by petitioner to said Frellsen, and known between petitioner and said Frellsen as the Hood and Wilson notes.

Wherefore petitioner pleads the said sum in compensation and set-off of said Frellsen's claim in said suit No. 6326, and avers that the attempt of said Frellsen to collect the whole of said notes sued on in suit 6326 is a gross fraud and violation of good faith,
30 it having been thoroughly understood at the time petitioner executed the same that a sufficient number of them should be surrendered and cancelled to cover the aforesaid Hood and Wilson notes whenever the interest and cost of the collection of same should be ascertained upon a settlement.

Petitioner shows that for the year 1871 his plantation, known as the Hood and Wilson Place, was rented to one George W. Smith, for the use and benefit of said Frellsen, for the price and sum of $1,200 (the lease being in the name of said Frellsen), which said sum the said Frellsen agreed also to credit on the said mortgage notes sued on in No. 6326, which sum is now pleaded in compensation.

Shows that for the year 1868 petitioner's plantation, situated in your said parish and State, at the head of Lake Providence, and
31 known as Black Bayou, and also his plantation known as the Home Place, were both leased to me, John W. Boice, and that the said Home Place was also leased to the said Boyce for the years 1869, 1870, and 1871; that all of the said rents for the said years were for the account of the said Frellsen by agreement with him or his duly authorized agent, Edward Sparrow, said Frellsen agreeing to give petitioner credit for the same, and at the time the notes sued on in suit No. 6326 were executed it was thoroughly understood and agreed between petitioner and said agent of said Frellsen that the same were to go in payment and cancellation of petitioner's said notes sued on in suit No. 6326, when the exact amount of the whole of said rents should be ascertained upon a settlement; that said rents did in fact amount to $12,500.00, with legal interest,
32 which petitioner also pleads in compensation of the claim set up by said Frellsen in suit No. 6326.

Shows that from time to time petitioner has sold a large number of town lots lying in the town of Providence, realizing in all over $12,000, which said sum passed into the hands of said Frellsen or his agent, and was by express understanding to be credited on said mortgage notes sued on in suit No. 6326, which said sum petitioner further pleads in compensation and payment of said Frellsen's claim.

Petitioner shows that he has been greviously imposed upon by said Frellsen and his said agent; that he had the most implicit confidence in them; that, owing to his, petitioner's, great age and infirmities, he was in fact incapacitated from properly guarding his
33 interest, and that the manner in which he has been treated,

as aforesaid, and deceived by said Frellsen and his said agent constitute a gross fraud upon him, as he will fully prove in the trial of this suit.

The premises considered, petitioner prays that a writ of injunction issue, and that the said Henry Frellsen be commanded and enjoined not to proceed any further in the seizure and sale of petitioner's property or to take any further steps in the execution of said order of seizure and sale in suit 6326 until the further order of your honorable court, when the legality or illegality of the same may be ascertained upon trial.

Prays that the sheriff of Carroll parish be made a party to this suit, and that he be enjoined from executing any writ of seizure and sale issued in said suit No. 6326; that on trial the said in-
34 junction be made perpetual; that the notes sued on in said suit No. 6326 may be declared paid and compensated and ordered to be delivered up and cancelled; that petitioner may have judgment against said Frellsen for the sum of $8,000, amount due him by said Frellsen in *access* of the mortgage notes of said party now due, and for $2,000 damages for attorneys' fees.

Prays that said Frellsen may be cited, and for costs and general relief.

(Signed) LEONARD & KENNEDY, *Att'ys.*

Govy Hood, being sworn, deposes and says that the allegations contained in the foregoing petition are true, & that the district judge is now absent from the parish of Carroll.

(Sig) GOVY HOOD.

Sworn to and subscribed before me this 22d day of Dec., 1875.

(Sig,) E. C. MOSS,
Parish Judge.

This reference approved.

E. R. HUNT, *Clerk.*

Amended Petition.

13th District Court, Parish of East Carroll.

GOVY HOOD
vs.
H. FRELLSEN and *al.* } 6364.

To the honorable the judge of 13 district court, parish of East Carroll:

Plaintiff in the above-entitled cause, with leave of the court, amends his original petition, and alleges that the sale of his
35 property, consisting of three valuable plantations and other lands in the parish of Carroll during the months of September and December, 1868, under the judgment styled Henry Frellsen *vs.* Govy Hood, No. 4890, made part hereof for reference and greater

certainty, was in effect a consent conveyance, and it was agreed that Frellsen should assume and take the legal title of said property as security for his debt.

Plaintiff was to continue to occupy the dwelling-house and reside on the Home Place as previously, which was done by him. The agent of Frellsen, General Edward Sparrow, was to lease out all the open lands from year to year on said plantations, collect the rents, as well as the rents which had already accrued for the year 1868,
and Frellsen was to credit plaintiff with the amount thereof
36 on the indebtedness evidenced by the judgment styled Henry
Frellsen *vs.* Govy Hood, No. 4890, the judgment under which the sale or conveyance to Frellsen had been made. It was also agreed that plaintiff should have the right to negotiate or bargain for the sale of one or more of said plantations or other property thus placed as security in the name of Henry Frellsen; that Frellsen should pass the title, collect the price, and credit plaintiff with the amount thereof on the indebtedness evidenced by said judgment of Henry Frelisen *vs.* Govy Hood, No. 4890, in pursuance of which the plantation known as Black Bayou Place was conveyed to one Wm. Alling for the price of $32,000, and that Frellsen was
to reconvey to plaintiff the legal title of the remainder of the
37 property after the payment as aforesaid of the judgment No.
4890; that in pursuance of the agreement aforesaid Frellsen, in May, 1871, did reconvey to petitioner the title of the property remaining after the sale of Black Bayou Place.

Petitioner shows that at the time of the reconveyance of his property as aforesaid he was led into error and induced by General Edw'd Sparrow, the agent of Henry Frellsen, to sign the mortgage notes herein enjoined, amounting to about $30,000, upon the statement of said agent, in whom petitioner had implicit confidence, that it was all right; and at the future final settlement, after allowing all credits for rents, sale of lands, and credits for whatever nature or
kind, petitioner would remain in debt to Frellsen, on account
38 of said judgment No. 4890, in the sum aforesaid; that, without being furnished by Frellsen with an account or statement of amount of credits, rents, and revenues received by Frellsen from the plantations and property of plaintiff, and in advance of final settlement, he was induced by said agent to sign said mortgage notes, therein promising to pay Frellsen an alleged balance of indebtedness of some $30,000, whereas in truth and in fact he now discovers he did not then owe Frellsen one dollar. On the contrary, Frellsen was owing him a large amount, as specially set out in his original petition.

Plaintiff charges that he has always been recognized by Frellsen as the real owner of said property, notwithstanding the legal title at
one time appears to be in the name of Frellsen; that he re-
39 sided on the plantation as usual, looked after and repaired the buildings, guarded them from delapidation or deterioration by trespassers; that he paid the taxes with the knowledge and approval of said agent and attorney, and under the agreement

retained the right of disposition—that is, the right to sell could not be exercised by Frellsen except with his, plaintiff's, consent; also under the agreement Frellsen was bound to account to plaintiff for rents and revenues, notwithstanding the paper title was in Frellsen's name.

Petitioner further alleges that he was old, ignorant, feeble in body and mind, thoroughly broken down, depressed, and crushed by the misfortunes and losses occurring to him by the war when he was induced by plaintiff and his agent, Edward Sparrow, to
40 confess judgment in suit No. 4890, and subsequently to entrust the legal title of his property—indeed, all his business—to them. He — induced to do so because he desired to pay Frellsen; he felt his own incapacity to manage business successfully, and he had the utmost confidence in the ability, integrity, and honor of Frellsen and his said agent, and really believed that they would manage all his business and administer the property for him better than he could himself.

The agent of Frellsen, Gen'l Edward Sparrow, had been for many years a friend and neighbor of plaintiff; he was proud of his friendship, and had the most implicit confidence; that in all plaintiff's business matters said agent of Frellsen would not permit plaintiff to be wronged; indeed, plaintiff's confidence was so great in this
41 distinguished friend, General Sparrow, that he signed without question all papers that Sparrow said was right and asked him to sign.

All the business of the petitioner, as well as the bankrupt proceedings, was managed and gotten up by said agent of Frellsen as petitioner then believed to be in his interest, but now he discovers it was all managed and concocted in the interest of Frellsen and his said agent and attorneys for the purpose of defeating other creditors, if there should be any, and also defrauding petitioner out of a large amount of money over and beyond the amount of the judgment No. 4890.

Petitioner charges Frellsen and his said agent and attorneys with fraud against him from the time he was induced by said agent, Edw'd Sparrow, to confess judgment in suit No. 4890 to the
42 time of the execution of the mortgage notes herein enjoined, and it pervaded through all the various transactions and proceedings which occurred in the meantime. Petitioner alleges that at the time he signed the mortgage notes herein, at the instance of Edward Sparrow, agent of Frellsen, he asked no questions, and signed them because Sparrow said it was "right."

He entered into no settlement, for rents and revenues *was* furnished with no account, and he did not take into account the two mortgage notes of George G. Wilson which he had given to Frellsen for collection shortly after their execution, in 1857, which said notes have never been accounted for, and which plaintiffs believes and charges have been used and appropriated by Frellsen, and
43 for which he prays judgment in compensation and reconvention.

Wherefore petitioner, reaffirming the allegations of his original petition, prays that defendants be cited, and for judgment as prayed for in the original petition, and for general relief.

W. G. WYLY, *Att'y.*
J. M. KENNEDY, *Att'y.*

Amended Petition.

13th Dist. Court, Parish East Carroll.

GOVY HOOD *vs.* HENRY FRELLSEN.

Now comes Govy Hood, and by leave of court amends his petition and amended petition and alleges that the allegations in both of said petitions are true and correct, and that the mortgage notes enjoined by him in this case were obtained by fraud and in error, and he prays for trial by jury and for general relief.

GOVY HOOD.

44 Sworn and subscribed before me this 3 day of December, 1877.

T. J. GALBRITH, *D'y Cl'k.*

Counsel for Govy Hood pray that the foregoing amended petition and affidavit be filed, and they pray for trial by jury.

LEONARD AND KENNEDY,
W. G. WYLY, *Att'ys.*

Endorsed: No. 6364. Govy Hood *vs.* H. Frellsen. Amended petition. Affidavit and prayer for jury. Filed Dec'r 4th, 1877. T. J. Galbrith, d'y cl'k.

Answer.

GOVY HOOD
vs.
H. FRELLSEN. } 6364.

The defendant appears, and for answer to plaintiff's petition shows that no good and valid bond has been given and filed in getting out this said injunction. He admits that he obtained the order of seizure and sale which has been enjoined.

Respondent shows that he has long since previous to the
45 execution of the notes sued on in this executory process given credit to said Hood for all sums which he may have paid.

Answering further, he denies each and every allegation in said petition contained except such as are herein admitted. Respondent prays that said injunction may be dissolved at pl'ff's costs; that plaintiff and his security on the injunction bond be condemned to pay respondent 20% general damages on the amount enjoined, $2,000; special damages for att'y's fees, and 10% interest on the

amount enjoined; that plaintiff's demand be rejected at his costs, and for general relief in the premises.

J. W. MONTGOMERY, *Att'y.*

Endorsed: 6364. Govy Hood *vs.* H. Frellsen & *al.* Answer. Filed 27 November, 1876. J. J. Stanfill, d'y cl'k.

Amended Answer.

46 District Court.

GOVY HOOD *vs.* HENRY FRELLSEN.

The defendant, by leave of court, amends his original answer and shows to the court that on the 28th day of December, 1868, the plaintiff, Govy Hood, filed in the U. S. district court, sitting in bankruptcy, in New Orleans, his petition to be declared a bankrupt, accompanying which petition were various schedules of his assets and liabilities made out under oath and duly filed; that on the 26 day of January, 1869, he was duly declared to be a bankrupt by said court according to the laws of the Government; that afterwards, to wit, on the 27 day of January, 1871, he, said Hood, was duly discharged by said court from all his debts, claims, and liabilities after having taken all the necessary oaths and having in other respects complied with the laws required in such cases; that by reason
47 of such proceedings and such judgments and decrees the said Govy Hood is estopped from setting up claim or title to any of the notes and demands set out in his petition and from setting up any of his said defences to respondent's order of seizure and sale as set out in his petition.

Wherefore he prays as in his original answer.

J. W. MONTGOMERY.

Endorsed: 6364. Govy Hood *vs.* Henry Frellsen. Amended answer. Filed June 6, 1877. R. J. Londun, d'y clerk.

Answer to Amended Petition.

District Court, Parish of East Carroll.

GOVY HOOD *vs.* H. FRELLSEN. } 6364.

The defendant appears, and for answer to plaintiff's amended petition denies generally each and every allegation therein con-
48 tained except such as may have been admitted in his answer to the original petition and such as may be admitted herein; shows that plaintiff frequently admitted his indebtedness on the notes sued on; solicited indulgence from appearer and obtained a further prolongation of time; that all the allegations of fraud and imposture set up by him are a mere after-thought, utterly false, and destitute of foundation in truth.

Respondent prays, as in his original answer, that the injunction be dissolved; that he recover of pl'ff and his securities on his bond *in solido* 20% general damages, 10% interest on the amount enjoined, and $2,500 special damages, for att'y fees in this behalf, for costs, and general relief.

J. W. MONTGOMERY.

49 Endorsed: 6364. Govy Hood *vs.* H'y Frellsen. Answer to the amended petition. Filed Dec. 3, '77. T. J. Galbrith, d'y clerk.

50 *Judgment of the District Court.*

GOVY HOOD *versus* HENRY FRELLSEN.

Appeal from 13th district court, parish of East Carroll.

This is an injunction suit brought by the plaintiff to restrain the sale of two large and valuable plantations, known as the Hood Home Place and the Hood and Willson Place, in the parish of East Carroll, under an order and a writ of seizure and sale obtained by the defendant to seize and sell said Home Place and Hood and Willson Place plantations to satisfy a debt of $30,152, with interest and costs. Plaintiff pleads payment and compensation of the debt for which the notes were given, which form the claim the defendant was proceeding to collect by seizure and sale, and also makes a plea in reconvention against the defendant for a large sum. He also alleges that the notes were given in error, and that a fraud and an imposition were practiced on him by the defendant, Henry Frellsen, and his agents and attorneys in Carroll parish. There is no allegation or pretense that the notes sued on, and the payment of which is enjoined,
51 were ever paid or compensated, but the allegations are that the debt for which they were executed had been paid and compensated, and that there was error and fraud in their execution.

Before the late war the plaintiff was a large and wealthy planter in the parish of Carroll, and the defendant was his cotton factor and commission merchant for many years, their business transactions ranging from $40,000 to $50,000 annually. After the war it would appear that the plaintiff was largely indebted to the defendant in a sum of over $39,000; besides, he was heavily in debt to many other parties. He had, in common with other Louisiana planters, lost all his slave property by the war, and all his plantations severely wrecked and dilapidated in the meantime; in fact, he was thereby bankrupted and rendered insolvent, hopelessly.

He went into bankruptcy in 1868, and in due course received his discharge from all his obligations.

It is manifest from all the evidence that plaintiff Hood made the defendant Frellsen a favored and preferred creditor, under some kind of pledge or promise that the plaintiff would in the end profit thereby; in fact, he threw himself, body and soul, if such an expression is allowable, into the keeping and possession of Henry Frellsen and his attorneys.

Henry Frellsen has possessed himself of all the fortune left to the

plaintiff Hood at the close of the war, to the exclusion of all his other creditors—even to a large privileged claim he owed to his wife. Both plaintiff and defendant plead the bankruptcy of the plaintiff Hood as an estoppel of each other's demands, but it is clear that the relations of these parties to each other make such pleas more than worthless, if possible. Early in the year of 1866 the plaintiff confessed a judgment in favor of the defendant for over $39,000, with interest at eight per cent. per annum, on various sums thereof from antecedent dates, as specified in that judgment. This was a purely consent affair, to give Frellsen an advantage over his other creditors, and doubtless with some expressed or implied promise to Hood that it would be best for him. In the summer of 1868 Frellsen
52 caused execution to issue on this confessed judgment; caused three valuable plantations to be seized and advertised for sale. He bought them all in himself for the pitiful sum of $24,000, which sum was entered as a credit on Frellsen's judgment; one of which plantations Frellsen sold about one year after his purchase at sheriff's sale, viz., Black Bayou Place, for $32,000 and could have sold it for a much larger sum. In the month of October, about a month after Frellsen had bought all of Hood's property, he entered into a written agreement to sell back to Hood all the property he had bought at sheriff's sale in certain installments mentioned in said written agreement, which was the sum of Frellsen's judgment against Hood, with certain other charges therein specified. It is now contended by Frellsen, the defendant, that Hood did not comply with said written agreement. Be this as it may, which the evidence leaves in some doubt, Frellsen did not at any time act with the plaintiff as though he regarded said agreement as having been forfeited by non-compliance on the part of Hood. Over twelve months after this written agreement to reconvey the property had been entered into Frellsen entered a credit of $32,000, the price of Black Bayou plantation, on the debt he held against Hood, then in judgment, which payment and credit were largely in excess of any installment or installments then due Frellsen under his agreement to reconvey the property back to Hood.

The account which Frellsen made out against Hood and attached to his answer to interrogatories propounded to him in this suit conclusively proves that he regarded Hood as still in process of settling his old claim, when he sold back the Home and Hood and Willson Places to Hood in 1871 for a balance on said old claim for $30,152, as made out against him on 1st May, 1871, for which sum, in installments, notes, with a mortgage on Home and Hood and Willson Places, was given for the purchase price thereof. The defendant was proceeding to collect those notes and foreclose said mortgage when he was met by the injunction in this suit. Mr. Hood, though not an idiot, is shown by the evidence to be a very old, feeble,
53 weak-minded, confiding man, as he placed himself and all he had in the world in Frellsen's hands to pay him an old *ante bellum* claim, to the exclusion of all his other creditors (even as against his wife), to over one hundred thousand dollars. Frellson should be the last man this side of the grave to speculate on Hood.

He should be more than satisfied to collect every dollar of his old claim against Hood, with interest and costs. It is a tolerably easy task to ascertain how much Hood owed Frellsen on the 1st day of May, 1871, the time he sold back the Home and Hood and Willson Places to Hood on his old claim against him, but, unfortunately, the evidence is not clear how much the defendant owed plaintiff on the 1st of May, 1871, but there is enough evidence in the record to show that Hood did not owe Frellsen $30,152 on that day. The nighest approach this court can arrive at in doing justice to both parties is to allow the defendant the full amount of his old claim on which judgment was confessed by Hood in February, 1866, with interest and costs and the taxes which he alleges he paid up to 1st May, 1871, and to deduct therefrom the following credits, due plaintiff by defendant, for proceeds of sale of cotton sold by Foster & Co., the sale of Black Bayou plantation, rents of lands, and amounts collected on the Geo. G. Willson notes, with interest thereon to the 1st of May, 1871, the time the notes were executed, the payment of which is enjoined in this suit, as shown by the following account between the parties, which is made the basis of the judgment in this case, to wit:

Govy Hood to Henry Frellsen, Dr.

1st. Note described in confessed judgmeut	$5,273 33
8 per cent. interest thereon from 15th October, 1862, to May, 1st, 1871	3,603 44
2d. Note described in said judgment	5,291 11
8 per cent. interest from 3d November, 1862, to May 1st, 1871	3,594 43
3d. Note described in said judgment	5,307 88
8 per cent. interest from 17th November, 1862, to May, 1st, 1871	3,589 30
54 4th. Note described in said judgment	5,327 77
8 per cent. interest from December 3d, 1862, to May 1st, 1871	3,583 81
5th. Note described in said judgment	5,338 89
8 per cent. interest from December 3, 1862, to May 1, 1871	3,579 43
6th. Note described in said judgment	5,346 66
8 per cent. interest from December 20th, 1862, to May 1st, 1871	3,576 24
7th. Note described in said judgment	7,133 85
8 per cent. interest from January 10, 1863, to May 1, 1871	4,740 06
On premiums mentioned in said judgment	300 00
8 per cent. interest from February 1, 1866, to May 1, 1871	126 00
Taxes alleged to have been paid for 1869	721 50
8 per cent. interest thereon for one year	67 72
Amount paid for sheriff's fees on sale of property	237 00
8 per cent. interest thereon for two years and eight months	60 56
	$66,798 98

Per Contra.

By proceeds of sale of cotton by Foster & Co. in January, 1869 (this could not be rent cotton, but must have been raised by Hood in 1868)	$5,598 92	
8 per cent. interest thereon from January 15, to May 1, 1871	1,026 46	
Price of Black Bayou plantation, sold to Mr. Alling in December, 1869	32,000 00	
8 per cent. interest thereon from January 1, 1870, to May 1, 1871	3,413 33	
Rent of Home Place, Black Bayou, and the Hood and Willson to John W. Boyce for 1869	5,000 00	
55 8 per cent. interest thereon from January 1, to May 1, 1871	533 33	
Amount collected on G. G. Willson notes, March 5, 1857, as per receipt on notes	4,650 00	
8 per cent. interest thereon from time collected to May, 1871	5,270 00	
Proceeds of sale of G. G. Willson tracts of land, after deducting all costs and fees	2,212 00	
(Frellsen is probably liable to Hood for the price of the sale of this tract of land to D. L. Morgan, in 1874, for $10,000, but as so much time had elapsed from the time of Frellsen's purchase to his sale to Morgan, it has not been allowed.)		
8 per cent. interest thereon from time of purchase to 1st May, 1871—three years	530 88	
		$60,234 92
Leaving a balance due Frellsen on his old claims against Hood on the 1st of May, 1871, of		$6,564 06
By amount collected of Geo. W. Smith for the rent of the Hood and Willson Place for 1871, to take effect as a credit on the balance due Frellsen Jan. 1, 1872		1,200 00

Frellsen should account to Hood for the rent of the Hood and Willson Place for the — 1870, but there is not sufficient evidence to show that the rents of that year were collected by Frellsen or his agent, but they should and could have been collected. It is, therefore, by reason of the law and the evidence, ordered, adjudged, and decreed, that plaintiff's injunction herein sued out be sustained and perpetuated, in so far as that the demand of the defendant, Henry Frellsen, in his executory process, No. 6326 on the docket of this court, being the same herein enjoined, be reduced to the sum of $6,564.06, being balance due him on the 1st of May, 1871, and that

the balance of his claim therein set up be rejected; and it is further ordered and decreed that the sheriff proceed to execute the
56 said order of seizure and sale, No. 6326, to the amount of the above sum only, together with interest thereon at the rate of eight per cent. per annum, from May 1st, 1871, and costs of same, less a credit thereon of $1,200, to take effect from January 1st, 1872. It is also ordered, adjudged, and decreed that the demand of the plaintiff, except as hereinbefore allowed, be rejected, and that defendant pay all costs of this suit.

Done, read, and signed in open court this 9th day of Dec., 1878.

WADE H. HOUGH,
Judge 13th District.

Counter-Letter.

It has been agreed between Henry Frellsen, of the city of New Orleans, and Govy Hood, of the parish of Carroll, Louisiana, as follows:

Whereas the said Frellsen did, on the 5th September last, purchase at sheriff's sale, under an execution issued upon a judgment obtained by him in the district court of said parish against the said Hood, for the sum of thirty-nine thousand three hundred and nineteen dollars and forty-nine cents, with interest as stated therein, certain peoperty belonging to said Hood, consisting of lands and plantations, as follows: The plantation on Lake Providence, occupied by said Hood, known as the Home Place, and the plantation on said lake known as the Black Bayou Place, and also the undivided half of the plantation known as the Hood and Willson Place, and certain lots and lands adjoining; all which are described in the act of sale made by the sheriff of Carroll to said Frellsen and of record; and whereas the said Frellsen does not desire to speculate on the said Hood or to take any advantage of him or his family, or to do no more than to secure the balance due him on his said judgment, after crediting the same with the amount of the sale of the property on said lake, known as the Willson Place, and sold under a mortgage and judgment held by said Frellsen against George G. Willson: Now the said Frellsen hereby stipulates and promises as follows:

1st. That he will sell and transfer the above-named property to the said Hood or to his assigns without any warranty
57 of any nature or kind whatever, either as to the title to said property or the encumbrances upon it, of all of which said Hood is fully informed, upon condition that said Hood or his assigns, as the case may be, punctually pay to said Frellsen the balance due upon his said judgment, less the credit above stated, as follows: Seven thousand dollars on or before the 15th day of December next, and eight thousand dollars annually from that date for four years, and the balance at the end of five years from the 15th December next, and also all costs and expenses attending said sheriff's sale, and other incidental expenses attending this arrangement, and all taxes now due or which may become due hereafter on said property, and also pay to Sparrow & Montgomery two thousand five

hundred dollars in four equal annual payments from 15th December next, with 8 per cent. interest thereon from that date, it being understood that the failure of said Hood or his assigns to punctually pay any of the amounts above stated at the dates fixed is to operate as a discharge and to release the said Frellsen from all his obligations herein. The costs and expenses named above are to be paid by or before the 15th December next. The said Frellsen agrees further that he will lease to the said Hood or to his assigns the said property, from year to year whilst this agreement is in force, until he is paid in full, for such an annual rent as he may think just, not, however, to exceed eight thousand dollars a year, with the understanding that he will credit the rent which may be paid him upon the yearly installments as above stated; and, further, that if the said Hood or his assigns fail to pay punctually any of the annual installments as above stated, after having paid one or more of them, and this agreement has become null and void thereby, the said Frellsen will pay back to him or his assigns any surplus remaining after deducting all interest which may accrue on the said above-named judgment from this date.

Witness our hands this 26th day of October, 1868.

HENRY FRELLSEN,
By his attorney-in-fact, EDWARD SPARROW.
GOVY HOOD.
HENRY FRELLSEN.

58 *Account Current.*

Govy Hood to H. Frellsen, Dr.

One note due	Oct. 15, 1862,	bearing	8 per cent.	int	$5,273 33
" "	Nov. 3, 1862,	"	"		5,291 11
" "	Nov. 17, 1862,	"	"		5,207 88
" "	Dec. 3, 1862,	"	"		5,327 77
" "	Dec. 20, 1862,	"	"		5,346 66
" "	Jan. 10, 1863,	"	"		7,133 85
" "	Mar. 24, 1862,	"	"		300 00
Interest on the above from maturity to Feb. 13, 1866					10,102 03
1866, Feb. 13.	Am't due on confession of judgment				$49,921 52
1869, Jan. 14.	Interest on the above to date				11,648 85
" "	Sheriff's fees on sale of property				237 00
1869, Jan. 14.	Amount due this date				$61,807 37

Cr.

1869, Jan. 14.	Received from Foster & Co., proceeds of cotton shipped to pay rent	5,598 92
	Balance due on this date	$56,208 83
1870, Jan. 1.	Interest on the above to date	4,320 38
1870, Jan. 1.	Amount due this date	$60,528 83

No. 83. October Term, 1887.

IN THE

Supreme Court of the United States.

RANSOM F. HUMISTON to the use, &c.,

vs.

JAMES P. WOOD and JOSEPH WOOD, trading, &c.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Brief of Defendants in Error.

A. H. WINTERSTEEN,
WAYNE MACVEAGH,
For Defendants in Error.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

Supreme Court of the United States.

Ransom F. Humiston

vs.

James P. Wood et al.

October Term, 1887.
No. 84.

STATEMENT OF THE CASE.

The action was *assumpsit* upon an alleged parol agreement by James P. Wood & Co. to pay plaintiff $25,000 for a territorial right to a patent.

But two witnesses were called on behalf of the plaintiff, viz., the plaintiff himself and William H. Myers.

The plaintiff's testimony, as brought out by his examination and cross-examination, was that in 1878 he had been agent in Cleveland, Ohio, for a patent oil-burning apparatus owned by one Holland, and had organized a stock company there, of which he was one of the directors, but which never went into operation. (Record, page 17.) That in June, 1879, he patented an invention of his own for the same purpose, known as Humiston's Atmospheric Hydrocarbon Light and Heat Generator, and came to Philadelphia to exhibit his apparatus. (Record, pages 14 to 17.) That he was introduced to the defendants, Joseph and James P. Wood, who were partners, trading as James P. Wood & Co., who allowed the apparatus to be tried in their store. That after trial they asked him what he proposed to do with it, to which he replied that he was going to sell it. That they then asked him how he proposed to sell it, to which he replied that he had had no experience, but understood that the usual way was to form a stock company. That James Wood asked if he was particular

about forming a stock company, and he said no; but that he would as leave sell it to James P. Wood & Co. That they then asked him the price, which he named. That they had some conversation about raising the money, and decided that the easiest way was to form a stock company. That all the parties then went to see an attorney. That it was suggested that it would require five persons to form a company, and Mr. Feltwell, who was James P. Wood & Co.'s superintendent, and William H. Myers, who was a friend of plaintiff, agreed to go into it to make up the number. That a written agreement was then drawn up between these five persons (pages 14 and 15). This agreement was produced, and is printed in Record, page 20.

It was an agreement of the five individuals, viz.: The plaintiff, the two Woods, Feltwell, and Myers to organize a stock company for the manufacture and sale of plaintiff's apparatus in Pennsylvania and New Jersey. It provided that Humiston should transfer to the other parties the territorial right to the patent and should receive from the "Concern, or Association, "or Corporation" $25,000 therefor in certain installments. It further provided that each party should use his best endeavors to sell the stock, and that Joseph Wood should be the treasurer. It also provided that the terms of this agreement should cease "*immediately after the organization aforesaid.*" Joseph and James P. Wood *were named in this agreement as individuals, the name of the firm nowhere appearing.* Plaintiff further testified that *Joseph Wood objected to signing this paper* on the ground that *it might impose some personal liability on the signers* for the payment of the price of the patent, and that thereupon another paper was drawn and executed cotemporaneously with the first (page 18).

This paper was produced and is printed in the Record, page 22. It is a deed-poll under the hand and seal of Humiston, reciting the above agreement, and agreeing that the parties thereto *shall not be personally responsible for the price of the patent, but that he would look to them only as trustees for the sale of the stock of the company and the payment to him of the price out of the proceeds.* This paper and the other were executed

simultaneously about August 2d, 1879 (pages 15, 17 and 18), and shortly afterwards Humiston executed to Joseph Wood, as trustee for the five persons named in the agreement an assignment of the territorial right to the patent, the trust being expressed in the assignment (pages 17, 22, and 23).

Plaintiff further testified that it being found impracticable to form a corporation in Pennsylvania the association held a meeting on October 7th, 1879, and appointed a committee to ascertain the practicability of obtaining a charter in New Jersey; that before the committee reported he spoke on November 3d, 1879, to Joseph Wood, and asked him when the committee would report; that Joseph said, "If you are perfectly satisfied we do not care about forming the stock company, we will take the ownership ourselves upon the same terms;" that he could not give the exact language but that this was the substance (page 15); that subsequently various offers were received for territorial rights which were not accepted; that at defendant's request he went to Pittsburgh and endeavored to sell the patent there but failed; that afterwards he went to New York upon his own suggestion and made an agreement to form a stock company there, but that he never succeed in having the apparatus introduced; that defendants had from time to time paid him small sums of money, amounting in all to $640 (page 16); that the first of these sums was a loan and he gave his note for it, but that the balance were on account of the price of the patent; *upon being shown a due-bill for one of these subsequent payments he admitted that he had given it* (page 19); that in June, 1880, he called upon defendants for the purchase-money and they refused but gave no reason; that later in June they called on him and said that the reason was that they had made nothing in their business and requested him to wait; that subsequently he demanded $1000, and they said they could not pay it; that he then successively demanded $500, $200, $100, $10, and they said they had men to pay off and couldn't pay over $10; that he then brought this suit (pages 16-17).

Plaintiff identified a letter written by him to defendants, February 12th, 1880, asking for what price they would sell

the patent right for railroad purposes alone in Pennsylvania and New Jersey, and a letter received from them in reply, February 13th, 1880, saying, "We leave it entirely with you "to make such arrangements as *you may deem best for the in-* "*terests of all concerned*" (pages 18, 19, 30, and 31). Plaintiff also identified a letter written by him to defendants, *February 18th, 1880*, in which he says, "*James will remember saying to* "*me that until sales were made that I could have such small* "*sums as I needed for my current expenses*" (pages 19, 31, and 32).

The only other witness called was William H. Myers. He testified to the execution of the written agreements, and that afterwards, in December, 1879, he had a conversation with Joseph Wood about a sale of the right for Western Pennsylvania; that Joseph Wood said that they thought of taking it themselves and of abandoning the company, and by selling territory realizing enough to pay Humiston. *There was no evidence that any assignment of the patent had ever been made to defendants, or that the five persons named in the articles of association had ever released their rights under the assignment to Joseph Wood as trustee, or had ever dissolved their association or abandoned their agreement.*

Upon this evidence the court instructed the jury that there was not sufficient evidence to warrant them in finding a sale by Humiston to James P. Wood & Co., and directed them to find for the defendants.

ARGUMENT.

The written agreement vested the ownership in five persons. Until this agreement was abrogated by the act of all five no sale could be made by one of the five to two others. The only assignment ever made of the patent was to a trustee for the five persons and, *according to plaintiff's testimony, it remained in this shape up to the time of trial without any release from the five owners.* According to the plaintiff's own testimony the patent was not his to sell in November, 1879, and

the alleged agreement with Joseph Wood November 3d, even if made, would have been of no effect.

There was, however, no sufficient evidence of any agreement of the firm of J. P. Wood & Co. to buy the patent. The only conversation was between plaintiff and Joseph Wood, and the latter could not bind the firm by such a contract.

For an act of one partner to bind the firm it must be within the scope of the partnership business.

Lindley on Partnership, 237, 238, 290–292;

Clay *vs.* Carter, 16 Weekly Notes of Cases (Pa.), 385.

A copartnership cannot be made liable for the act or undertaking of one of the firm in a transaction not embraced in their original partnership busines, unlesss proof is adduced that the partner sought to be charged knew of the transaction and assented to it or subsequently ratified it.

Lindley on Partnership, 236, note.

The test is: The act of one partner to bind the firm must be *necessary* for the carrying on of its business; if all that can be said of it is that it was convenient, or that it facilitated the transaction of the business of the firm, that is not sufficient in the absence of evidence of sanction by the other partners.

Lindley, 239;

Brettel *vs.* Williams, 4 Exch., 630.

Moreover, the whole testimony bearing upon the question of the agreement was so vague and contradictory in character that the jury would not have been warranted in finding from it a definite and binding agreement by the firm of J. P. Wood & Co. to pay plaintiff $25,000 in cash for the patent. A peremptory instruction for the defendant was therefore proper. Said this court, in Improvement Company *vs.* Munson, 14 Wall., 448: "Judges are no longer required to submit a "question to a jury merely because some evidence has "been introduced by the party having the burden of proof, "unless the evidence be of such a character that it would war- "rant the jury in finding a verdict in favor of that party. "Formerly it was held that if there was what was called a "*scintilla* of evidence in support of a case the judge was bound

"to leave it to the jury, but recent decisions of high authority "have established a more reasonable rule, that in every case, "before the evidence is left to the jury, there is a preliminary "question for the judge, not whether there is literally no evi- "dence, but whether there is any upon which a jury can "properly proceed to find a verdict for the party producing "it, upon whom the *onus* of proof is imposed."

"If the court can see that if a verdict for the plaintiff should "be rendered, it ought to be set aside as being unwarranted "by the testimony, an instruction to find for the defendant "should be given in advance of the verdict."

Pleasants *vs.* Fant, 22 Wall., 116.

This is the settled law of this court. See the following very recent cases, in which all the late decisions of the court are collected:

Schofield *vs.* Chicago, Milwaukee and St. Paul Railway Co., 114 U. S., 615, 618, 619;

Marshall *vs.* Hubbard, 117 U. S., 415, 419;

Goodlett *vs.* Louisville and Nashville Railroad, 122 U. S., 391, 411.

Now not only was there no evidence for the jury of a definite and binding agreement by the firm of J. P. Wood & Co. to pay the plaintiff $25,000 for his patent, *but the record shows that the plaintiff himself knew that he had no such agreement.* He of course must rely alone upon the alleged verbal agreement with Joseph Wood of November 3d, 1879. For up to that time the written contracts in evidence show that there was no personal or firm liability from the defendants to the plaintiff—merely an obligation of the projectors of the corporation to pay him out of the proceeds of whatever stock should be sold.

The plaintiff testified that he received altogether from the defendants $640 in several payments on account of the consideration for the purchase. It was proven that he gave due-bills for the first two of these sums, viz., $100 and $150, respectively. (Page 19.) This shows that they were not payments on account of purchase-money, but loans from the firm to him. The second of these due-bills is dated November

8th, 1879. (Pages 19, 32.) The verbal undertaking of Joseph Wood to buy the patent, upon which the plaintiff rests his case, is alleged to have been made November 3d. (Page 18.) We find the plaintiff, therefore, five days after this alleged solemn agreement to purchase, giving his due-bill for $150 to the parties who, he pretends, owed him $25,000 as purchase-money. The giving of this due-bill is hopelessly inconsistent with the existence of a prior obligation of the defendants which made them his debtors.

The plaintiff's letter of February 18th, 1880 (pages 31–32), also contradicts his own theory of a contract with James P. Wood & Co. as a firm. He closes thus: "James will re-"member saying to me that until sales were made that I "could have such small sums as I needed for my current "expenses." It is not in keeping with reason to suppose that a man who had already sold and delivered an article for $25,000 and had been paid by the purchasers practically no portion of the purchase-money, would state his demands upon his debtors in such a way. This letter is consistent with no theory but that of the continuance of the contract between the five corporators of the projected corporation, whereby one of them, Humiston, was to be paid $25,000 for his patent out of sales of stock of the corporation. But the existence of this contract at this date falsifies the theory of the plaintiff that it had been superseded by a contract with the firm on November 3d, 1879. That in the minds of the defendants the corporation continued in existence is shown by their letter of February 13th, 1880 (page 31), in answer to plaintiff's letter of February 12th. Plaintiff had asked for authorization to sell part of the patent right for Pennsylvania and New Jersey. The defendants replied promptly: "With reference to price "for our interest in Pennsylvania and New Jersey for railroad, "we leave it entirely with you to make such arrangements *as "you may deem best for the interest of all concerned.*" "All "concerned" could only mean the five parties to the original contract. It cannot fail to be noted, too, that the plaintiff writes to the defendants five days after this, on February 18th, as stated, and makes no allusion to their statement of their

position in the transactions impliedly given in their letter of the 13th. Had the statement been erroneous, we must believe that Humiston would have promptly protested against it.

It is submitted that both the positive and the negative evidence in the case tended to falsify rather than to establish the plaintiff's claim. If, therefore, under the decisions, as we have seen, the trial judge is justified in directing a verdict for the defendant when there is no sufficient evidence in the plaintiff's favor, *a fortiori* is he *required* to do so when, in addition to the insufficient evidence, there is direct, positive written evidence against the plaintiff's claim.

ANSWER TO ARGUMENT OF PLAINTIFF.

It will be convenient to consider the positions of the plaintiff in the order in which they were advanced by him.

I. It is not important to the argument that the plaintiff was the owner of a patent on July 30th, 1879.

II. *It is not the fact* that the *defendants* secured from plaintiff an assignment for the States of Pennsylvania and New Jersey upon the promise to pay $25,000. The agreement found in the record (page 21) expressly shows that the concern or association or corporation, and not the defendants, secured the assignment and agreed to pay the consideration therefor.

III. *It is not the fact* that the defendants regarded themselves as the persons meant by the words "concern or asso-"ciation" who were to pay the plaintiff. The second paper (page 22) relied upon to establish plaintiff's position, effectually disproves it. That paper recites that *all the five projectors of the association*, and not the firm of James P. Wood & Co., agreed to pay Humiston for his patent. The contracting clause in it shows that Humiston agreed with all the other four projectors of the company, not alone with the members of the defendant firm, that they should be without personal liability for payment of the money.

The recitals in the first paper, dated July 30th, and the assignment, dated September 30th, expressly declare that the five persons, James P. Wood, Joseph Wood, Feltwell, Myers, and Humiston, *associated* themselves together to obtain a charter of incorporation, and to form a *company*. The second agreement of July 31st recited that *the same five persons* agreed to form a *company*. After these recitals it is idle to argue that James P. Wood and Joseph Wood, constituting the firm of James P. Wood & Co., were the concern or association.

It is of course equally untrue that, as charged, the defendants abandoned the sale of the stock, and kept the plaintiff's patent without paying a consideration for it. For there is no evidence that they were under obligation, as a firm, to sell the stock, and they never had the patent as their property.

IV. *It is not the fact* that the defendants are liable to the plaintiff for the consideration by reason of their acts and declarations.

(*a.*) The acts and declarations of the defendants, made before the execution of the agreement dated July 31st, or of the assignment of September 30th, are not evidence to show an alleged ownership in the patent contrary to the terms of those papers. Oral evidence is inadmissible as to the relations of the parties.

Hunt *vs.* Rousmanier, 8 Wheat., 174;
Shankland *vs.* Washington, 5 Pet., 390;
Specht *vs.* Howard, 16 Wall., 564;
Bailey *vs.* Railroad Company, 17 Wall., 96.

The relations of the parties are to be arrived at not by what they may have intended, nor by what they may have said they intended, but by what the written engagements solemnly entered into by all of them after due deliberation declare they intended. All expressions of the status of the parties, and all overtures between them prior to their written undertakings, culminated and were merged in those undertakings, and therefore belong out of the case. As, then, it would have been the duty of the trial judge to withdraw from the jury all evidence

of the matters referred to under this head (Plaintiff's Brief, page 10), it was properly ignored by the court in determining the legal merits of the plaintiff's case.

(*b.*) There is nothing in the conversation between the plaintiff and Joseph Wood described under this head to indicate the completion of a contract between Humiston and James P. and Joseph Wood, trading as James P. Wood & Co. James P. Wood was not a party to the alleged contract. Joseph Wood could not bind him by his own undertaking entered into in the name of the firm, the subject of the negotiation not being in the course of the partnership business. But there was no contract even between Joseph Wood and Humiston. Wood is declared to have said, "*if you are perfectly satisfied* we don't "care about the company, we *will* take the ownership our- "selves." The form of this language implies that Humiston should do something before the contract should be complete, viz., express his satisfaction with the proposition. This he did not do, and there was no contract closed then. Moreover, John P. Wood said, "we *will* take the ownership ourselves," that is, at a future time the ownership will be assumed. This is no positive assumption of ownership upon which an action for the consideration will lie. *It will be observed that the action is not for specific performance of a contract to purchase, or even for breach of a contract to purchase, but is for the consideration money due on a purchase alleged already to have been made.* (See pleadings, Plaintiff's Brief, pages 4–6.) But before such an action will lie it is very plain that ownership of the thing sold must be shown in the defendants. The language of Joseph Wood relied on by plaintiff does not show this, and, indeed, the very fact that the title to the patent up to the time of trial, and to this day, has been in the name of Joseph Wood, trustee for the five members of the association, effectually negatives the pretension that the firm of James P. Wood & Co. were the owners.

(*c.*) Even if it be true that James P. Wood used language to a third person, Mr. Moran, which could be construed as holding himself or his firm out to that person as the owner, it would not follow that he was or that they were the owners,

so as to be liable to Humiston for the consideration of a purchase *not shown to have been made.*

(*d.*) It is not proven and there is no evidence that the *defendants* sent plaintiff to sell for *them.* The arrangement as to the exhibit at the State Fair of Pennsylvania, as well as the arrangement as to Humiston's selling in Western Pennsylvania, does not indicate that the Woods were the *sole owners,* but only tends to show that they were interested in it. But, that aside, these engagements were in September, 1879, and before that date. This was prior to the actual written assignment of September 30th, whereby the actual ownership of the patent was transferred to Joseph Wood, trustee for the association. Of course, therefore, such dealing between the parties before September 30th throws no light on the ownership of the patent after that date.

(*e.*) Plaintiff's testimony, in his direct examination, that the defendants paid him $640 *on account of purchase-money* (page 16), is contradicted by his own admission, on cross-examination (page 19), that the first two of these payments were loans, the due-bills for which were in evidence. (Page 32.) And the allegation that any of these payments were payments on account of purchase-money is proven to be false by the postscript to the plaintiff's letter of February 18th, 1880. (Page 32, folio 81.) In it he very plainly indicates his understanding that the moneys he was receiving were advances to defray his current expenses until, in accordance with the terms of the second agreement dated July 31st, 1879, he could be paid out of sales of stock of the association.

(*f.*) The testimony of William H. Myers relied on by the plaintiff is to the effect that they had *thought something* of taking the patent themselves. This is very different from a definite purchase of the patent. It will of course be conceded that the Woods thought of purchasing the patent, for that the evidence very plainly shows. But as matter of fact they did not purchase or definitely agree to purchase it. The alleged employment by defendants of Myers to make sale is valueless as evidence that they *had* purchased the patent. It merely bears out his former testimony that they had thought

something of purchasing it. Confident of being able to secure it if they wished it, its value to them was dependent upon the possibility of sale of a territorial right. The employment of Myers was with a view to test this value. At all events, it does not indicate that they had title to the patent, when the uncontradicted written evidence is that the title was out of them.

(*g.*) The attendance of the expert at the office of the defendants was in August, 1879 (page 27), before the execution of the assignment of September 30th, whereby the title passed out of Humiston to the trustee of the association. It is, therefore, valueless as evidence of their ownership of it after that date.

(*h.*) The fact that the firm of James P. Wood & Co. had *adopted* the apparatus does not at all, as the plaintiff argues, indicate that they had bought the patent. On the contrary, it very plainly indicates that they had not bought it. For had they bought the patent they would of course have advertised it *as their own*, and not have advertised that they adopted or used the apparatus in their business as that of another, viz., Professor Humiston's.

(*i.*) The argument of the plaintiff under this head is that in February, 1880, he addressed the defendants as if they were the owners of the patent for Pennsylvania and New Jersey, and they did not expressly deny the assumption. It need only be observed, in answer to this, that ownership in an article is not to be made out by a plaintiff by proof of his written assumption of such ownership coupled with a letter from the defendants which does not expressly repudiate the assumption. But it is very plain that the defendants did, in their letter of February 13th, 1880, practically repudiate the assumption that they were the sole owners of the patent. They refer to their ownership as an *interest*, and leave it to him to make such arrangements as he may deem best for the interest of all concerned.

It may well have been that Humiston deluded himself with the supposition that he had a right to treat the firm of James P. Wood & Co. as the sole owners of the patent for Pennsylvania and New Jersey. But there is no written or other

competent evidence that they had bought or agreed to buy it, and that therefore he had a right to treat them as such owners.

Even if it were possible, therefore, for parol evidence as to the nature of the contract between the parties to be used to show it, there is no parol evidence in the case which establishes a contract such as the plaintiff contends there was. The minds of Humiston and James P. and Joseph Wood did not at any time meet to establish a firm ownership in the patent.

But the rule excluding parol evidence to vary the terms of a written contract is directly in the plaintiff's way. The written instruments in evidence have a very plain and obvious meaning, and do not depend for their proper effect upon oral testimony.

The plaintiff's object in offering parol evidence in the case was to show, as indeed, to recover, he would have been obliged to show, that James P. and Joseph Wood were personally liable for the price of the patent alleged to have been sold. This is in direct contradiction to the written instrument of July 30th, which declared they should *not* be personally liable. No theory of the admission of parol evidence to explain, or of collateral facts and exclusive circumstances to give effect to, written instruments is therefore applicable.

The cases cited in the plaintiff's brief need not be examined, as the principles they declare and recognize support only the present view of the case.

The propositions insisted upon to defeat the plaintiff's claim and to sustain the ruling of the court below may briefly be summarized.

I. In so far as the claim is based on the alleged agreement of the defendants, prior to November 3d, 1879, to buy the letters patent of the plaintiff, and pay him $25,000 therefor, it is disproven by the unimpeached written agreements of the plaintiff to sell his patent to five persons who should pay him out of the proceeds of stock to be sold, and who should not be

personally responsible for the payment of the money. (Pages 20–22.)

And no evidence as to oral undertakings of the parties before or after these agreements is admissible which tends to contradict their plain and unambiguous meaning.

II. In so far as the claim is based on an alleged oral agreement of November 3d, 1879, by Joseph Wood for his firm to buy the letters patent, it is without merit, because

(1.) The plaintiff by a written assignment (pages 23, 24), solemnly made September 30th, 1879, transferred the letters patent to Joseph Wood, trustee for an association of five persons, and the title to these letters patent remained in him as trustee on and after November 3d and up to the time of trial, so that the plaintiff confessedly had nothing to sell to the firm of James P. Wood & Co.

(2.) Joseph Wood had no authority to bind his firm by such a contract, it being without the scope of the partnership business.

(3.) There was no evidence of a subsequent ratification by the firm of such alleged undertaking of Joseph Wood.

(4.) The evidence was clear and direct, both by the subsequent conduct and letters of the plaintiff and by the actions and letters of the defendants, that no such undertaking was made or was intended to be made: *e. g.* Humiston accepted loans of money from the defendants, while, upon his present contention, they owed him $25,000; he wrote letters asking for money as a favor, when, if his present position is not a pretense, he could have demanded it as a right; as late as February, 1880 (page 32, fol. 81), he falsifies every one of his own theories by writing to Joseph Wood, "*James will remember saying that until "sales were made that I could have such small sums as I needed "for my current expenses;*" his own witness William H. Myers swore (page 20, fol. 58) that in December, 1879, which was after the date of the alleged verbal contract with Joseph Wood, the latter said to him that they had merely *thought* of taking it themselves; and the defendants, writing to the plaintiff under date of February 13th, 1880 (page 31, fol. 79), expressly

repudiated all assumption that they were sole owners by purchase of the letters patent. They refer to the then ownership as an *interest*, clearly implying thereby that others were then joint owners, viz., the other members of the association. And they leave it to Humiston, who was one of the joint owners under the assignment of September 30th, 1879, to make such arrangements as he might deem best for the interest of *all* concerned.

III. Nothing short of an engagement or contract of purchase absolutely brought home to and fastened upon both the defendants will suffice for a recovery. There must have been evidence showing or tending to show that the *minds of the plaintiff and the defendants met* upon the subject-matter of the contract declared on. At best there was submitted for the plaintiff as against the two defendants nothing but unfounded impressions as to their personal undertakings. These were subsequent considerations on the part of Humiston devised or imagined, as we must believe, when he found from experience that his patent was not salable, and that there was therefore no possibility that the owners of the patent—the association by its trustee Joseph Wood—would be able to pay him for it out of proceeds of stock to be sold.

The action is against the individuals composing the firm of James P. Wood & Co. The only possible ground of action which the evidence tends to establish is against the association of five individuals to compel an organization of the contemplated company, and a payment to plaintiff from proceeds of stock thereafter to be sold. Or a rescission of the contract might be required from the association whereby he would have his letters patent restored to him. It is singularly aberrant to select two of the parties contracting, and seek to hold them to a liability directly stipulated against in the only agreements proven in the case.

A. H. WINTERSTEEN,
WAYNE MacVEAGH,
For Defendants in Error.